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VOLUME EIGHT

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LABOR TURNOVER

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*University of Oxford*
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*University of Paris*
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*Encyclopaedia of the Social Sciences*
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*Mexico City*
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*Moscow*
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*Calcutta University*
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*University of Chicago*
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*Buenos Aires*
- Givens, Meredith  
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- Greene, Nathan  
*Harvard University*
- Groethuysen, Bernhard  
*University of Berlin*
- Grotkopp, Wilhelm  
*Berlin*
- Gurian, Waldemar  
*Bonn*
- Gurvitch, Georges  
*Paris*
- Gutmann, Franz  
*University of Göttingen*
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*Columbia University*
- Hamilton, Walton H.  
*Yale University*
- Hanbury, H. G.  
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*New York City*
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*University of Minnesota*
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- Heller, Hermann  
*University of Berlin*
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*Somerville, Massachusetts*
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*University of Königsberg*
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Kiev*
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*Library of Congress*
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*London*
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schule, Zurich*
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Sciences*
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# CONTENTS

## Contributors to Volume Eight

ix

## Articles

INDUSTRIAL REVOLUTION  
INDUSTRIAL UNIONISM  
INDUSTRIAL WORKERS OF THE WORLD  
INDUSTRIALISM  
INFANT MORTALITY

INFANTICIDE  
INFECTIOUS DISEASES, CONTROL OF

INFLATION AND DEFLATION

INGENIEROS, JOSÉ  
INGERSOLL, ROBERT GREEN  
INGRAM, JOHN KELLS  
INHERITANCE  
INHERITANCE TAXATION  
INITIATION  
INITIATIVE AND REFERENDUM  
INJUNCTION  
INLAND WATERWAYS  
INNOCENT III  
INNOVATION  
INQUISITION  
INSANITY—CRIMINAL LAW  
CIVIL LAW

INSPECTION  
INSTALMENT SELLING  
INSTINCT  
INSTITUTION  
INSTITUTIONS, PUBLIC  
INSURANCE

PRINCIPLES AND HISTORY  
INDUSTRY

LAW AND REGULATION  
INSURGENCY, POLITICAL  
INSURRECTION  
INTEGRATION, INDUSTRIAL  
INTELLECTUALS  
INTELLIGENCE  
INTENT, CRIMINAL  
INTERALLIED DEBTS

INTEREST

*Herbert Heaton*  
*See* TRADE UNIONS  
*Paul F. Brissenden*  
*G. D. H. Cole*  
*See* CHILD, section on CHILD  
MORTALITY  
*A. M. Hocart*  
*See* COMMUNICABLE DISEASES,  
CONTROL OF  
*James Harvey Rogers and*  
*Lester V. Chandler*  
*C. Bernaldo de Quirós*  
*Harry E. Barnes*  
*Lindley M. Fraser*  
*G. D. H. Cole*  
*William J. Shultz*  
*Nathan Miller*  
*William B. Munro*  
*Zechariah Chafee, Jr.*  
*See* WATERWAYS, INLAND  
*E. F. Jacob*  
*Horace M. Kallen*  
*E. F. Jacob*  
*Sheldon Glueck*  
*Edwin W. Patterson*  
*Edith Ayres*  
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*L. L. Bernard*  
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*Alfred Manes*  
*A. H. Mowbray*  
*Edwin W. Patterson*  
*Lindsay Rogers*  
*Frederick L. Schuman*  
*See* COMBINATIONS, INDUSTRIAL  
*Roberto Michels*  
*See* MENTAL TESTS  
*Max Radin*  
*See* LOANS, INTERGOVERNMENTAL;  
REPARATIONS  
*Frank H. Knight*

INTERESTS  
 INTERGOVERNMENTAL LOANS  
 INTERLOCKING DIRECTORATES  
 INTERMARRIAGE  
 INTERMEDIATE CREDIT BANKS  
 INTERNAL REVENUE TAXES  
 INTERNATIONAL ADVISERS  
 INTERNATIONAL AGREEMENTS  
 INTERNATIONAL ARBITRATION  
 INTERNATIONAL, COMMUNIST  
 INTERNATIONAL FINANCE  
 INTERNATIONAL LABOR ORGANIZATION  
 INTERNATIONAL LAW  
 INTERNATIONAL LEGISLATION  
 INTERNATIONAL ORGANIZATION  
 INTERNATIONAL PAYMENTS, BALANCE OF

INTERNATIONAL RELATIONS  
 INTERNATIONAL, SOCIALIST  
 INTERNATIONAL TRADE—INSTITUTIONAL  
     FRAMEWORK  
     THEORY

INTERNATIONAL WATERWAYS  
 INTERNATIONALISM  
 INTERNMENT  
 INTERPELLATION  
 INTERSTATE COMMERCE—UNITED STATES

OTHER FEDERAL STATES  
 INTERSTATE COMMERCE COMMISSION  
 INTERSTATE COMPACTS  
 INTERVENTION  
 INTESTACY

INTIMIDATION  
 INTOLERANCE  
 INTRANSIGENCE  
 INVALIDITY INSURANCE  
 INVENTION  
 INVESTIGATIONS, GOVERNMENTAL  
 INVESTITURE CONFLICT  
 INVESTMENT  
 INVESTMENT BANKING  
 INVESTMENT TRUSTS  
 IONESCU, TAKE  
 IRISH QUESTION  
 IRNERIUS  
 IRON AND STEEL INDUSTRY

GENERAL  
 LABOR CONDITIONS  
     United States  
     Other Countries

IRREDENTISM

*R. M. MacIver*  
 See LOANS, INTERGOVERNMENTAL  
     *Gardiner C. Means*  
     *Bernhard J. Stern*  
 See FARM LOAN SYSTEM, FEDERAL  
 See EXCISE  
     *Raymond Leslie Buell*  
 See AGREEMENTS, INTERNATIONAL  
 See ARBITRATION, INTERNATIONAL  
 See COMMUNIST PARTIES  
     *Moritz Julius Bonn*  
     *Francis G. Wilson*  
     *Edwin M. Borchard*  
     *Manley O. Hudson*  
     *Pitman B. Potter*  
 See BALANCE OF TRADE; INTER-  
     NATIONAL FINANCE  
     *George Young*  
 See SOCIALISM; LABOR MOVEMENT

*Franz Eulenberg*  
*Jacob Viner*  
*J. P. Chamberlain*  
*H. N. Brailsford*  
 See ENEMY ALIEN; NEUTRALITY  
     *Lindsay Rogers*  
     *Felix Frankfurter and Paul*  
     *A. Freund*  
     *Joseph J. Senturia*  
     *I. L. Sharfman*  
 See COMPACTS, INTERSTATE  
     *Percy H. Winfield*  
 See INHERITANCE; SUCCESSION,  
     LAWS OF  
     *J. B. S. Hardman*  
     *M. C. Otto*  
     *Horace M. Kallen*  
 See HEALTH INSURANCE; OLD AGE  
     *Carl Brinkmann*  
     *George B. Galloway*  
     *A. J. Carlyle*  
     *Lionel D. Edie*  
     *Jules I. Bogen*  
     *Leland Rex Robinson*  
     *Christine Galitzi*  
     *Jesse Dunsmore Clarkson*  
     *A. Arthur Schiller*  
  
*Meredith Givens*  
  
*Colston E. Warne*  
*Horace B. Davis*

*Max Hildebert Boehm*

IRRIGATION  
ISABELLA OF CASTILE  
ISELIN, ISAAK  
ISIDORE OF SEVILLE  
ISLAM  
ISLAMIC LAW  
ISMAIL KEMAL BEY  
ISMAÏ, THOMAS HENRY  
ISOLATION  
ISOLATION, DIPLOMATIC  
ITAGAKI, COUNT TAISUKE  
ITO, PRINCE HIROBUMI  
IVAN IV  
IVO OF CHARTRES  
IXTLILXÓCHITL, FERNANDO DE ALVA  
IZVOLSKY, ALEXANDER PETROVICH

JABAVU, JOHN TENGO  
JACINI, STEFANO FRANCESCO  
JACKSON, ANDREW  
JACOBINISM  
JACOBS, JOSEPH  
JACOBUS  
JACOBY, JOHANN  
JAHN, FRIEDRICH LUDWIG  
JAKOB, LUDWIG HEINRICH VON  
JAKŠIĆ, VLADIMIR  
JAMÁL U'D DÍN AL-ÁFGHÁNÍ  
JAMES I  
JAMES OF VITERBO  
JAMES, WILLIAM  
JAMESON, ANNA BROWNELL  
JANET, PAUL  
JANNET, CLAUDIO  
JANSENISM  
JANSSEN, JOHANNES  
JAPANESE IMMIGRATION  
JARVIS, EDWARD  
JASTROW, MORRIS  
JAURÈS, JEAN  
JAVID, MAHMAD  
JAWORSKI, WŁADYSŁAW LEOPOLD  
JAY, JOHN  
JEFFERSON, THOMAS  
JEKELFALUSSY, JOZSEF  
JELAČIĆ, COUNT JOSIP  
JELLINEK, GEORG  
JENKIN, HENRY CHARLES FLEEMING  
JENKINS, SIR LEOLINE  
JENKINSON, CHARLES  
JENNER, EDWARD  
JESSEL, SIR GEORGE  
JESUITS  
JEVONS, WILLIAM STANLEY  
JEWISH AUTONOMY

*E. H. Carrier*  
*See* FERDINAND V AND ISABELLA  
*Louise Sommer*  
*Joseph Clayton*  
*Joseph Schacht*  
*Joseph Schacht*  
*Norbert Jokl*  
*A. W. Kirkaldy*  
*Max Hildebert Boehm*  
*William L. Langer*  
*Ryusaku Tsunoda*  
*Kiyoshi K. Kawakami*  
*A. A. Kiesewetter*  
*See* YVES OF CHARTRES  
*Manuel Gamio*  
*Sidney B. Fay*  
  
*J. D. Rheinallt Jones*  
*Salvatore Pugliese*  
*William MacDonald*  
*Crane Brinton*  
*Cecil Roth*  
*See* FOUR DOCTORS  
*Gustav Mayer*  
*Franz Schnabel*  
*V. Gelesnoff*  
*Josef Matl*  
*Hans Kohn*  
*Harold J. Laski*  
*Richard Scholz*  
*Horace M. Kallen*  
*Wanda Fraiken Neff*  
*Léon Brunschvicg*  
*Jean Auburtin*  
*Bernhard Groethuysen*  
*Ernst Lasowski*  
*See* ORIENTAL IMMIGRATION  
*George A. Lundberg*  
*J. A. Montgomery*  
*Charles Rappoport*  
*Albert H. Lybier*  
*Kazimierz W. Kumaniecki*  
*William MacDonald*  
*Carl Becker*  
*Frédéric de Fellner*  
*Dušan J. Popović*  
*Hermann Heller*  
*Redvers Opie*  
*Frederic Rockwell Sanborn*  
*See* LIVERPOOL, FIRST EARL OF  
*Bernhard J. Stern*  
*H. G. Hanbury*  
*Walter Goetz*  
*H. Stanley Jevons*  
*Simon Dubnow*

JEWISH EMANCIPATION  
 JEX-BLAKE, SOPHIA  
 JHERING, RUDOLF VON  
 JIHAD  
 JĪMŪTAVĀHANA  
 JINGOISM  
 JIREČEK, JOSEF KONSTANTIN  
 JITTA, DANIEL JOSEPHUS  
 JOACHIM OF FLORA  
 JOHANN MORITZ  
 JOHN DUNS SCOTUS  
 JOHN QUIDORT OF PARIS  
 JOHN OF SALISBURY  
 JOHNSON, GEORGE  
 JOHNSON, JOSEPH FRENCH  
 JOHNSON, SAMUEL  
 JOHNSON, TOM LOFTIN  
 JOHNSTON, SIR HARRY HAMILTON  
 JOINT COST  
 JOINT STOCK COMPANY  
 JOLY, CLAUDE  
 JONES, ABSALOM  
 JONES, ERNEST CHARLES  
 JONES, LLOYD  
 JONES, MARY  
 JONES, RICHARD  
 JONESCU, TAKE  
 JORDAN, DAVID STARR  
 JÖRG, JOSEPH EDMUND  
 JOSEPH II  
 JOSEPHUS, FLAVIUS  
 JOST, ISAAC MARCUS  
 JOURDAN, ALFRED  
 JOURNALISM  
 JOURNEYMEN'S SOCIETIES  
 JOVELLANOS, GASPAR MELCHOR DE  
 JOWETT, BENJAMIN  
 JUARÉZ, BENITO PABLO  
 JUBAINVILLE, HENRI D'ARBOIS DE  
 JUDAISM  
 JUDD, ORANGE  
 JUDGMENTS  
 JUDICIAL INTERROGATION  
 JUDICIAL PROCESS  
 JUDICIAL REVIEW  
 JUDICIARY  
 JUGLAR, CLÉMENT  
 JULIANUS, FLAVIUS CLAUDIUS  
 JULIANUS, SALVIUS  
 JURIEU, PIERRE  
 JURISDICTION  
 JURISDICTIONAL DISPUTES  
 JURISPRUDENCE  
 JURY—ENGLAND AND THE UNITED STATES  
 OTHER COUNTRIES

*Salo Baron*  
*Grace Ford*  
*J. Wilhelm Hedemann*  
*Franz Babinger*  
*Seymour Vesey-Fitzgerald*  
 See CHAUVINISM  
*Josef Matl*  
*J. Kesters*  
*Ernesto Buonaiuti*  
*Hermann Wätjen*  
 See DUNS SCOTUS, JOHN  
*Richard Scholz*  
*E. F. Jacob*  
*R. H. Coats*  
*A. Wellington Taylor*  
*Alfred Cobban*  
*Carroll H. Wooddy*  
*Leland H. Jenks*  
 See COST; OVERHEAD COSTS  
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*Percy Ford*  
*Tom Tippet*  
*E. M. Burns*  
 See IONESCU, TAKE  
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*Waldemar Gurian*  
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*Simon Dubnow*  
*Jacob Shatzky*  
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*Allan Nevins*  
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*F. de Zulueta*  
*Franklin C. Palm*  
*Roger S. Foster*  
 See DUAL UNIONISM  
*Roscoe Pound*  
*Roscoe Pound*  
*William Seagle*

JUS GENTIUM  
JUS NATURALE  
JUST PRICE  
JUSTI, HERMAN  
JUSTI, JOHANNES HEINRICH GOTTLOB VON  
JUSTICE  
JUSTICE, ADMINISTRATION OF  
JUSTICE OF THE PEACE  
JUSTINIAN I  
JUSTO, JUAN BAUTISTA  
JUVENILE COURTS

## JUVENILE DELINQUENCY AND JUVENILE COURTS

KABLUKOV, NIKOLAY ALEKSEYEVICH  
KADLEC, KAREL  
KAGWA, APOLO  
KAHL, WILHELM  
KÁLLAY, BÉNI  
KAMÁL MAHMAD NÁMŮK  
KAMIEŃSKI, HENRYK MICHAŁ  
K'ANG YU-WEI  
KANKRIN, COUNT EGOR FRANZEVICH  
KANT, IMMANUEL  
KARADŽIĆ, VUK STEVANOVIĆ  
KARAGEORGE, PETROVIĆ  
KARAMZIN, NIKOLAY MIKHAYLOVICH  
KARAVELOFF, LUBEN  
KAREYEV, NIKOLAY IVANOVICH  
KARISHEV, NIKOLAY ALEXANDROVICH  
KARL FRIEDRICH  
KÁRMÁN, MÓR  
KARO, JOSEPH BEN EPHRAIM  
KASIM AMIN  
KASKEL, WALTER  
KATKOV, MIKHAIL NIKIFOROVICH  
KAUFMAN, ALEXANDR ARKADIEVICH  
KAUTILYA  
KAUTZ, GYULA  
KAVELIN, KONSTANTIN DMITRIEVICH  
KAY-SHUTTLEWORTH, SIR JAMES  
KEARNEY, DENIS  
KEITH, MINOR COOPER  
KELETI, KÁROLY  
KELLER, FRIEDRICH LUDWIG  
KELLEY, FLORENCE  
KELLEY, OLIVER HUDSON  
KELLEY, WILLIAM DARRAH  
KELLOGG, EDWARD  
KELLY, EDMOND  
KÉMÁL MÉHMÉD NÁMŮK  
KEMBLE, JOHN MITCHELL  
KEMPER, JERONIMO DE BOSCH  
KENT, JAMES

Max Radin  
See NATURAL LAW  
Edgar Salin  
John R. Commons  
Louise Sommer  
Georges Gurvitch  
William Seagle  
Chester H. Smith  
Charles Diehl  
Roberto Giusti  
See JUVENILE DELINQUENCY AND  
JUVENILE COURTS

Miriam Van Waters

S. Procopovitz  
Theodor Taranovsky  
I. Schapera  
Rudolf Smend  
Robert Braun  
Ahmet Emin  
Franciszek Bujak  
Hu Shih  
Solomon Kuznets  
Ernst Cassirer  
Hermann Wendel  
Ferdo Šišić  
Paul Miliukov  
Josef Matl  
Paul Miliukov  
K. Kocharovskiy  
Louise Sommer  
Helmut Wiese  
Salo Baron  
George Young  
Hans Peters  
Paul Miliukov  
K. Kocharovskiy  
U. N. Ghoshal  
Theo Surdnyi-Unger  
Solomon Kuznets  
Michael E. Sadler  
Selig Perlman  
Margaret Alexander Marsh  
Theodore Szél  
Hans Fritzsche  
Helen R. Wright  
Solon J. Buck  
A. D. H. Kaplan  
John R. Commons  
Lewis Corey  
See KAMÁL MAHMAD NÁMŮK  
Thomas P. Peardon  
See BOSCH KEMPER, JERONIMO DE  
Norman L. Meyers



KETTELER, BARON WILHELM EMMANUEL VON

KEUFER, AUGUSTE

KEY, ELLEN

KEYSER, RUDOLF JAKOB

KHAMA

KHMELNITSKY, BOHDAN

KHOMYAKOV, ALEXEY STEPANOVICH

KHRIMIAN, MUGURDICH

KIDD, BENJAMIN

KIDERLEN-WÄCHTER, ALFRED VON

KIDO, TAKAYOSHI

KINDERGARTEN

KING, GREGORY

KING, LEONARD WILLIAM

KING, WILLIAM

KING, WILLIAM ALEXANDER

KINGSHIP

KINGSLEY, CHARLES

KINGSTON, CHARLES CAMERON

KINSHIP

KIRBY, JOHN, JR.

KIRCHMANN, JULIUS HERMANN VON

KIREYEVSKY, IVAN VASILYEVICH

KIRK, SIR JOHN

KISELEV, COUNT PAVEL DMITRIEVICH

KISTYAKOVSKY, ALEXANDER FEDOROVICH

KISTYAKOVSKY, BOGDAN ALEXANDROVICH

KIUPRILI FAMILY

KJELLÉN, RUDOLF

KLEIN, FRANZ

KLUCHEVSKY, VASILYI OSSIPOVICH

KNAPP, GEORG FRIEDRICH

KNAPP, MARTIN AUGUSTINE

KNAPP, SEAMAN ASAHEL

KNIBBS, SIR GEORGE HANDLEY

KNIES, KARL GUSTAV ADOLF

KNIGHTS OF LABOR

KNIGHTS OF ST. CRISPIN

KNOW NOTHING PARTY

KNOWLES, LILIAN CHARLOTTE ANNE

KNOWLTON, CHARLES

KNOX, JOHN

KOCH, ROBERT

KOGĂLNICEANU, MICHAIL

KOHLER, JOSEPH

KOLLÁR, JAN

KOLLÁTAJ, HUGO

KOLPING, ADOLPH

KONARSKI, STANISLAW

KOPRULU FAMILY

KOPS, JACOB LEONARD DE BRUIJN

KORAES, ADAMANTIOS

*G. Briefs**Georges Weill**Frida Steenhoff**Halvdan Koht**I. Schapera**M. Hruševsky**Solomon Kuznets**V. M. Kurkjian**Harry E. Barnes**Ernst Jäckh**Kiyoshi K. Kawakami**See* PRESCHOOL EDUCATION*J. F. Rees**A. T. Ohmstead**R. W. Postgate**George H. Van Buren**See* MONARCHY*G. D. H. Cole**Herbert Heaton**Robert H. Lowie**Jean Atherton Flexner**Theodor Sternberg**Solomon Kuznets**R. Coupland**A. A. Kiesewetter**M. Chubinsky**Georges Gurvitch**See* KÖPRÜLU FAMILY*Walther Vogel**Karl Gottfried Hugelmann**Paul Miliukov**Franz Gutmann**I. L. Sharfman**Edward Wiest**E. T. McPhee**Hans Gehrig**Mary R. Beard**See* LABOR MOVEMENT; LEATHER

INDUSTRY

*See* PARTIES, POLITICAL, section on

UNITED STATES

*Eileen Power**Norman E. Himes**Robert H. Murray**Karl Sudhoff**Christine Galitsi**William Seagle**Emmanuel Chalupný**Zofia Daszynska-Golinska**Theodor Brauer**William J. Rose**Albert H. Lybyer**See* BRUIJN KOPS, JACOB LEONARD

DE

*Panajotis Kanellopoulos*

## KORAN

KORKUNOV, NIKOLAY MIKHAYLOVICH  
KOROLENKO, VLADIMIR GALAKTIONOVICH  
KÓROSZ DE SZÁNTÓ, JÓZSEF  
KOŚCIUSZKO, TADEUSZ ANDRZEJ  
KOSSUTH, LAJOS  
KOSTOMAROV, NIKOLAY IVANOVICH  
KOVÁCS, GÁBOR  
KOVALEVSKY, MAKSIM MAKSIMOVICH  
KRAEMER, ADOLF  
KRAEPELIN, EMIL  
KRAUS, CHRISTIAN JACOB  
KRAUS, FRANZ XAVER  
KRAUZ-KELLES, BARON KAZIMIERZ  
KREITTMAYR, BARON VON  
KREK, JANEZ  
KREMER, BARON ALFRED VON  
KREUGER, IVAR  
KRIZANIC, JURIJ  
KROCHMAL, NACHMAN  
KRONVALDS, ATTIS  
KROPOTKIN, PRINCE PETR ALEXEYEVICH  
KRUEGER, PAUL  
KRUGER, STEPHANUS JOHANNES PAULUS  
KRUMBACHER, KARL  
KRUPP, ALFRED  
KRUTTSCHNITT, JULIUS  
KU KLUX KLAN  
KU YEN-WU  
KUENEN, ABRAHAM  
KULIZHNY, ANDREY EVMENEVICH  
KULTURKREIS  
KUNFI, ZSIGMOND  
KUOMINTANG

## LABAND, PAUL

LA BOÉTIE, ÉTIENNE DE

## LABOR

LABOR BANKING

LABOR BLACKLIST

LABOR-CAPITAL COOPERATION

LABOR COLLEGES

LABOR CONTRACT

LABOR DISPUTES

LABOR EXCHANGE BANKS

LABOR EXCHANGES

LABOR, GOVERNMENT SERVICES FOR

LABOR INJUNCTION

## LABOR LEGISLATION AND LAW

LABOR LEGISLATION

LABOR LAW

Anglo-American

Continental

## See SACRED BOOKS

*Georges Gurvitch*  
*Vladimir Rosenberg*  
*Theodore Szél*  
*A. M. Skalkowski*  
*Oscar Jászi*  
*M. Hruševsky*  
*Rusztém Vámbéry*  
*E. Spektorski*  
*Ernst Laur*  
*Eugen Bleuler*  
*Karl Pribram*  
*Wolfram von den Steinen*  
*Ludwik Krzywicki*  
*Eugen Wohlhaupt*  
*Hermann Wendel*  
*Franz Babinger*  
*Wilhelm Grothopp*  
*E. Smurlo*  
*S. Rawidowicz*  
*M. Valters*  
*Rodolfo Mondolfo*  
*Franz Sommer*  
*Jan H. Hofmeyr*  
*A. A. Vasiliev*  
*Eckart Kehr*  
*Eliot Jones*  
*Max Sylvius Handman*  
*Arthur W. Hummel*  
*W. F. Albright*  
*S. Procopovitch*

## See DIFFUSIONISM

*Oscar Jászi*  
*M. Searle Bates and Frank*  
*Wilson Price*

*Ernst von Hippel*

*Oscar Jászi*

*Emil Lederer*

*J. B. S. Hardman*

## See BLACKLIST, LABOR

*J. B. S. Hardman*

## See WORKERS' EDUCATION

*Ralph F. Fuchs*

*John A. Fitch*

*Karl Diehl*

## See EMPLOYMENT EXCHANGES

*Royal Meeker*

*Felix Frankfurter and Nathan*

*Greene*

*Edwin E. Witte*

*Robert L. Hale*

*William Seagle*

LABOR, METHODS OF REMUNERATION FOR

*H. S. Person*

LABOR MOVEMENT

*John R. Commons*

LABOR PARTIES

GENERAL

*J. B. S. Hardman*

GREAT BRITAIN

*H. N. Brailsford*

BRITISH DOMINIONS

*Herbert Heaton*

UNITED STATES

*J. B. S. Hardman*

LABOR TAX

*See FORCED LABOR*

LABOR TURNOVER

*Paul H. Douglas*

Encyclopaedia  
of the  
SOCIAL  
SCIENCES



# Encyclopaedia of the Social Sciences

INDUSTRIAL REVOLUTION is the name given to those economic and technological developments which gathering strength and speed during the eighteenth century produced modern industrialism.

As a label it is admittedly unsatisfactory. One writer calls it "an unhappily chosen epithet for a singularly constructive epoch" (Beales); another doubts whether the term, "though useful enough when it was first adopted, has not by this time served its turn" (Unwin); Lipson occasionally puts it in inverted commas. The chief objection is to the word revolution. Yet that use goes back to the period to which it is applied. Yarn making machines, coke smelted iron, Watt's engine and Wedgwood's ceramic triumphs were described by contemporaries as "great and extraordinary," "most wonderful"; their effects must be "beyond the power of calculation." The steam engine would "produce great changes in the appearance of the civilized world"; and "a revolution is making," said Arthur Young in 1788 when he saw the textile machines spread from the cotton to the woolen industry. Frenchmen after 1789 naturally used the word even more freely in reference to changes in technique, organization and commercial policy; and it became part of the socialistic vocabulary. Blanqui in 1837 declared that by the revolution industrial conditions in England had been more profoundly transformed than at any period since the beginnings of social life. Engels used the word in 1845, and the Marxian thesis was that the technological revolution had transformed the economic and social structure and would do the same to political and intellectual life. Toynbee knew Marx' *Capital*, had studied the German socialist movement and was undoubtedly influenced thereby in his use and understanding of the term he put into academic circulation. Mill and Jevons also spoke of revolution; and in 1852 Michael Angelo Garvey, an English barrister, published a little volume called *The Silent Revolution*, which dealt with the effects of steam transportation and the telegraph on "the condition of mankind."

To Toynbee the use of the word seemed en-

tirely justified. He envisaged a peaceful eve followed by a stormy dawn. Prior to 1760 the "old industrial system obtained"; industry was in the hands of small independent master manufacturers who combined farming and industry, employed a journeyman or two and trained an apprentice. Between master and man was a "warm attachment"; the employee was the "cherished dependent." The class of capitalist employers was "as yet in its infancy"; there was some putting out of materials by merchants to be worked up in the operative's home, and a few large factories were in existence. But small scale organization predominated, and the gulf between employer and wage earner was narrow. Over this "quiet world" of "scarcely perceptible movement," this "slowly dissolving framework of medieval industrial life," hung the comprehensive code of state regulation of production, trade and distribution. Internal free trade had come in Great Britain, but foreign and colonial trade were fettered and free movement or enterprise was checked.

This old order "was suddenly broken in pieces by the mighty blows of the steam engine and the power loom," the spinning machines, the improved roads, the expansion of domestic and foreign trade and the *Wealth of Nations*. The "two men who did most to bring [the revolution] about were Adam Smith and James Watt"; aided by the other inventors, they "destroyed the old world and built a new one." A period of "economic revolution and anarchy" resulted, in which productive methods changed, economic beliefs were revolutionized and the state swung over from regulation to laissez faire. Population was "torn up by the roots" and, like industry, was dragged "from cottages in distant valleys into factories and cities," there to become a collection of hands, "the living tool, of whom the employer knew less than he did of his steam engine." Population grew rapidly in numbers, but the number engaged in agriculture declined both relatively and absolutely; the factory system became the "all-prominent fact" in industry; overproduction and depressions—"a phenomenon quite unknown before"—became normal

parts of business life; landlords and manufacturers waxed rich, but the wage earner fared badly. True, he now had personal freedom, but war prices and the "innumerable evils which prevailed in this age of confusion" made his sufferings acute and long. Eventually his lot improved, thanks to organized self-help, the repeal of the corn laws, and factory acts; but meanwhile he had been in the track of a social tornado, which had torn him from his old moorings and left him damaged in status and living standards.

Toynbee put the industrial revolution into the series of historical phases. Henceforth it was apparent that for any understanding of the nineteenth century one must take account of English economics as well as of French politics. The term became popular, and at least two recent writers have described post-war efforts toward rationalization and the changes resulting from the coming of electric power and new chemical processes as "the New Industrial Revolution" (Meakin) and "the Second Industrial Revolution" (Jevons). But economic historians use the phrase with increasing hesitation and many mental reservations. They dislike the suggestion that revolutions in any generally acceptable sense of that term happen in economic affairs. "Sudden catastrophic change is inconsistent with the slow gradual process of economic evolution," says Birnie; "On the vast stage of economic history no sudden shift of scene takes place," says Sée; while Lipson emerges from a study of the seventeenth and eighteenth centuries with the conclusion that there is "no hiatus in economic development, but always a constant tide of progress and change, in which the old is blended almost imperceptibly with the new."

The modern view springs from a fuller knowledge of the periods both before and after 1760 than was possible in Toynbee's day. It is now known that the revolution did not "break" on an almost unchanging world of small scale non-capitalistic units, that the speed of transformation was far from rapid, that the ground was not quickly captured and that a picture of the social and economic evils of the period from 1760 to 1850 is far from filling the whole canvas. In the first place, the notion of an "eve" is blurred, if not blotted out, when it is discovered that the revolution had in 1760 "been in preparation for two centuries" (Unwin); that large scale enterprise under capitalistic conditions existed from at least the sixteenth century; that the changes in technique were "the completion of tendencies

which had been significantly evident since Leonardo da Vinci" (Usher); and that the developments between 1760 and 1830 "did but carry further, though on a far greater scale and with far greater rapidity, changes which had been proceeding long before" (Ashley). In the second place, the changes in productive methods depended on far more than a handful of inventions in Lancashire and Glasgow and with one or two exceptions took decades to work themselves out. The machines and engines raised as many problems as they solved—problems of metal supply, machine design, mechanical engineering, power transmission and so on. Machine production could improve only as quickly as did the production of machines and the invention of refinements to make their operation more efficient. The nature of some processes or materials was such that change was long delayed; wool combing refused to yield to machinery until about 1850, and wool yarn was so frail that even in 1860 the power loom in a woolen mill could work no more quickly than did the hand loom. In some industries change resulted from chemical discoveries rather than mechanical invention; in others, such as pottery, advance depended upon the discovery, by countless experiments, of new bodies, glazes, methods of decoration, better understanding and control of kiln temperatures as well as upon easier access by road and canal to raw materials and markets. Mining had no revolution; its story was one of "better methods, . . . slowly forged from the painful experience of common men, and only gradually did a new idea or a new device spread from pit to pit or from one coalfield to another" (Ash-ton). Building, one of the biggest fields of employment, suffered no revolution in methods until cheap steel and concrete were available. Thus with the one exception of spinning and its preliminary processes there was no sudden breaking of old methods or organization by "mighty blows." Professor Clapham's survey of British industry between 1820 and 1850 is a study in slow motion. He finds that "no single British industry had passed through a complete technical revolution before 1830" and reminds us that while the revolution had cut deep into the cotton industry by that date the Lancashire cotton operative was not the representative workman of the day. Even the typical town operative was "very far indeed from being a person who performed for a self-made employer, in steaming air, with the aid of recently devised mechanism, operations which would have made his grand-

father gap." Thus it is not until well into the nineteenth century that one finds the economic transformation approaching a stage that can be described as complete. A revolution which continued for 150 years and had been in preparation for at least another 150 years may well seem to need a new label.

Yet despite all hesitation the term stands and no better one has been devised. For there is in the period which began about 1750 something different in tempo and temper from that of any earlier epoch. The long inventive effort comes to a head in increased productive power, capital increases its power and resourcefulness, economic freedom is gained, domestic and foreign trade expand, the nature of the soil begins to be understood, goods can be moved more rapidly in greater bulk at lower cost for longer distances, and there is at least a "partial introduction of the methods of exact science in economic affairs" (Clapham). Any one of these things would have made a deep mark on the economic life of Europe; but when they came contemporaneously they interacted on one another and produced results which were far reaching and fundamental. From this "unprecedented social and economic development" (Unwin) the material appearance of England was changed "more profoundly than at any other time since the epoch of the last geological changes" (Tawney).<sup>1</sup>

The familiar question, "Why did the changes come when and where they did?" is now best answered if the changes are regarded as the outcome of developments which had been under way since at least 1600. Those developments included a great expansion in the volume of domestic, colonial and foreign trade; an improvement in commercial and financial structure; some growth of large scale organization and production; some advances in industrial equipment; and some scientific discoveries capable of industrial application. British trade grew fitfully but substantially during the seventeenth and eighteenth centuries: the European demand expanded; the American colonists provided a growing market for textiles and hardware; the door into the Spanish possessions was forced wider open; while Africa, the West Indies and the Orient provided good markets and profitable materials for carriage to Europe. Such statistics as exist show that exports from Great Britain doubled between 1720 and 1760 and again by 1795. Meanwhile the British population grew rapidly after, at latest, 1730, thanks chiefly to a declining death rate. It lived on the largest free

trade area in Europe; the wealth which flowed in from oversea trade gave its people a larger spending power and fund of capital; and some of the goods it imported stimulated natives to find ways of making these articles at home, e.g. cottons and pottery. The French story is somewhat similar. Export trade grew almost fivefold between 1715 and 1789 and was probably larger than that of Great Britain in the latter year. Shipowners and merchants flourished, and capital accumulated. Holland and Scandinavia also shared in the general trade expansion.

Economic organization improved during the seventeenth century. Banking and exchange facilities became more abundant and satisfactory, and joint stock companies were established for a large variety of purposes. Industries which served large or distant markets (textiles), which needed large sums of capital for equipment (mining, finishing trades), which worked on costly raw material (silk, precious metals) or which supplied customers who demanded long credit and were slow in paying their bills (London high class tailoring, coach building) were passing into the hands of large entrepreneurs. Sometimes these men were big industrialists who had risen from small beginnings; but often they were merchants who established control over the production of the wares they sold. The merchant had capital or knew where to get it; he could afford to buy raw materials in bulk; he knew the needs of the market and he could allow long credit. He therefore sometimes gave orders to independent master manufacturers instead of buying what was offered in the open market; he supplied working capital to the mines from which he obtained his coal; but in some industries he took control. He bought raw materials and put them out to be processed by domestic workers; he supplied patterns and specifications and possibly the tools and equipment as well; while the final processes whether of finishing or assembling might be done in his own workshop. Independent master manufacturers still existed, who worked aided by the members of their family, journeymen and apprentices and sold their wares in fairs or local markets; such men could be found in the urban handicrafts catering for purely local needs and in the woolen districts of Yorkshire. But in the great staple industries—especially textiles—of France, the Low Countries and England the merchant was gaining control and sometimes counted his dependents by the hundred or even the thousand. At times the economies of supervision, discipline



and time saving were realized by gathering many of these workers under one roof; while in mining, brewing, soap making, smelting, shipbuilding, tanning and the finishing trades large groups of men had to work together by reason of the very nature of their work or of the equipment they used. Sometimes these groups worked under full factory conditions at machinery driven by power. Polhem's factory set up in Sweden about 1700 was remarkable for its use of machinery, water power, division of labor and mass production methods.

The sixteenth and seventeenth centuries also witnessed some advance in industrial equipment and scientific knowledge. Leonardo da Vinci's notebooks contain sketches of a spinning machine, a power loom, roller bearings, universal joints, gears, lathes, drills, rollers for shaping iron, coin presses, turbines, steam cannon and other things, but no one can tell how far they depict contemporary equipment or are the product of his fertile imagination. The stocking frame, invented about 1589, was said to contain over two thousand parts; and cloth finishing machines caused much controversy in the same century. Glassmaking, tinning, gold and silver refining, were all improved after 1600; makers of clocks, jewelry and instruments of precision obtained better equipment; a ribbon loom capable of weaving a dozen or more widths at once appeared in Danzig, then in Holland and finally in England; the Dutch developed the wind saw-mill and other devices for speedy production of ships; the French experimented with the "draw loom," by which patterned cloths could more easily be woven; Polhem's factory was full of power driven metal shears, slitting mills, rollers and hammers; and a silk throwing machine which had been known in Italy before 1300 was copied north of the Alps and reached England in 1718. The harnessing of water, wind and animal power became more efficient, as did the use of gears, while the use of treadles seems to have spread. The work of the growing body of scientists on atmospheric pressure had by 1700 laid a foundation on which the steam engine could be built. True, the seventeenth century saw more technical problems than it was able to solve but it was far from being devoid of inventive inquisitive minds.

The motives which led to the technical progress of the eighteenth century were many and varied. Steam engines and coke fuel came as aids to men who were fighting a losing battle. Shallow deposits of coal, tin and copper were being ex-

hausted, yet existing pumps could not cope with the water which seeped into the lower levels; ruin was inevitable unless the pumping problem could be solved. Ironmasters were faced with vanishing charcoal supplies as the forests near iron deposits were cut down; they must find a new fuel or abandon their furnaces. Many inventions aimed at saving labor, at making possible the use of children for processes formerly done by adults and at overcoming a scarcity of skilled labor. The whole textile industry was hampered in its growth by the fact that a large number of workers was needed to prepare yarn for one weaver; a cotton loom used the yarn made by four or five spinners; a woolen weaver kept nine or ten people busy; while in the sail-cloth industry Arthur Young found twenty yarn makers to each weaver. Since much of the spinning was done by country dwellers, weavers were often idle in summer when the spinners went to gather the harvest. In making patterned cloths the silk weaver needed the aid of three women to raise or lower the warp threads prior to the passage of the shuttle. In the metal industries the cutting of cogwheels for watches and other implements was slow and unsatisfactory until a machine was designed which "reduced the expense of workmanship to a trifle in comparison to what it was before and [brought] the work to such an exactness that no hand can imitate it" (Campbell). Watt, Roebuck and Wedgwood all had great difficulty in finding tools and men capable of making goods exact in measurement: there was an error of three eighths of an inch in a cylinder made for Watt. Wilkinson's boring machine was designed to make possible the production of cannon and cylinders which would be uniform in diameter.

Inventive ingenuity was also stimulated by the hope of monetary reward. Leonardo da Vinci had planned a needle polishing machine which was to bring him the income of a Medici, and eighteenth century opinion grew more tolerant toward the inventor's claim to compensation. Even when patent rights were challenged, it was agreed that the inventor should be rewarded by some gift from the state or from some organization set up to encourage invention. Kings and parliaments protected or rewarded innovators, and such bodies as the Society for the Encouragement of Arts, Manufactures, and Commerce, established in London in 1754, offered premiums, medals and prizes.

The spearheads of the technological advance in the eighteenth century were iron, cotton and

pottery, and it is no mere accident that this should be so. For these industries were virtually new to England and were free from vested interests and government control. More important still, they had two markets, one to be captured, the other to be created. They strove to capture existing demands which were already met by supplies from the continent or the Orient; but in addition they saw the vast demand which would spring into being if they could offer cheap cottons, crockery or iron. Wedgwood showed his grasp of the situation when he established a Useful Branch as well as an Ornamental Branch. In the latter he won a luxury market once served by Dutch, French, German and Oriental potters; in the former he created a new demand among all sections from the middle class to the poor. Lancashire cotton goods ousted oriental produce from the European, African and plantation markets and eventually invaded the Orient itself; they stole some ground from the linen and woollen producers; but the total was insignificant when compared with the new demand for more clothing and for domestic decoration which the cheap fabrics created. The story is not one of insistent demand compelling changes in productive methods; it is rather one in which changed methods and lower production costs resulted in a commodity which created a new big demand.

These new stimuli to industrial change were at work in both France and Britain all through the eighteenth century. In each country invention and imitation were active, and the search for new ideas was made abroad as well as at home. England had welcomed the Huguenots after 1685; Lombe had copied the silk machine from Italy in 1718 and become a big factory owner; London paper makers strove eagerly to learn the secret of French, Dutch and Italian superiority; London calico printers imitated the methods practised in Hamburg; while tin plate makers set up rolling mills of Swedish design. The English countryside was sprinkled with methods, rotations, crops and implements picked up by English gentlemen during their "grand tour"; and such publications as the *Annual Register* and the *Gentleman's Magazine* gave space to descriptions of industrial and agricultural innovations. If one dare talk of "the spirit of the Age," that spirit in the mid-century was certainly a powerful stimulant to interest in and search for new and better methods. Of that spirit nearly all sections of society were drinking.

Of the outcome of this enthusiasm no detailed account can be given here. The great inventors

and discoverers whose names are known often built on foundations laid by scores of obscure men; their work was frequently an improvement or refinement upon that of others and in turn needed still further improvement before it became really satisfactory. Crompton's mule was, as its name suggests, at least a crossbred and did not do its best work until it was made self-acting nearly fifty years later. Watt's engine was originally only an improvement on that designed by Newcomen sixty years before, and until it obtained a crank action was little more than a somewhat more economical pump than its predecessor. Some men went searching on wrong tracks, and their chief contribution was that of warning others not to seek solutions in those directions. Cartwright's loom, for instance, seems to have been almost worthless. In the gallery of inventors some canvases are too large, some should not be there at all and many deserving ones have not yet been painted, much less hung.

By 1789 it was becoming apparent on both sides of the English Channel that Britain was pulling ahead of its nearest rival in industrial and agricultural technique. Young boasted that France had no counterparts to Arkwright, Wedgwood, Darby, Wilkinson or Boulton and those Frenchmen who opposed the Anglo-French commercial treaty of 1786 pointed to the advantages Britain enjoyed through its lead in equipment; its comparative freedom from state interference; its supplies of iron, coal, china clay and water power; its access to raw materials; its abundant supplies of capital in London, Liverpool and Glasgow; and the power which its industrialists and merchants wielded in political life. These assets did much to make Britain the workshop of the world during the next fifty years; the Napoleonic wars strengthened its grip on the seas and weakened France's access to raw materials and markets, while the demands of these wars strengthened the demand for mass production of many commodities, a demand which the British inventions were particularly fitted to meet. Meanwhile France, which had been eagerly copying the British cotton and iron equipment before 1789, fell back; and although there was some development in the production of cotton, iron and sugar during the revolution and war it ended that period economically weaker, with foreign trade crippled, capital scarce, transport facilities disorganized and many skilled workers killed. Not until about 1830 did French economic effort begin seriously the task of modernization, and even in 1850 there was little that

deserved to be called an industrial revolution. Fuel and raw materials were insufficient; capital was scarce; facilities for industrial investment were scanty; and the Frenchman was wedded to individualism, agriculture and small scale enterprise. Alsace-Lorraine was lost before ways were found of turning its ore into steel. Hence nineteenth century France fell behind its traditional rival; Holland had no resources on which to build up the new kind of industry; and of the two countries which were best fitted to follow the English lead only Belgium moved quickly; Germany remained almost stationary until 1850, if not later. It had to wait until the Zollverein and railroads overcame the obstacles to easy movement of persons and goods. In Italy industrialization was retarded by political disunity and later by lack of raw materials.

Great Britain was therefore left almost alone in developing the new technique and organization. France did contribute something to the common stock of invention and discovery—silk throwing machines, the Jacquard loom, the tubular boiler, the water turbine, chemical bleaching, a sewing machine and other things. Germany gave attention to the relations between science and production; Justus von Liebig put agricultural chemistry on its feet in 1840; nearly a century before that date Margraaf had found there was sugar in beetroot; while in 1802 the Silesian Achard found a way of extracting it on a commercial scale and thus gave Europe a new industry. After 1800 the North American contribution began to be important, and by 1850 American machine tools and machine products were entering the European market. The keynote of the American development was mass production of standardized articles, each part of which was made by machinery designed for one task. Skilled labor was scarce; the frontier consumer wanted goods which were cheap, serviceable or labor saving rather than polished, well finished and long of life. The designing of special machines which could be attended and fed by unskilled workers therefore became the first manifestation of "Yankee ingenuity"; these machines produced parts which were of standard sizes and which could therefore be assembled quickly by the same kind of labor. From the making of muskets and revolvers this method of production spread to that of clocks, woodwork, sewing machines, harvesters, locks and the like. English observers in the 1850's marveled at the "fearless and masterly manner" in which "correct principles" were applied by American engi-

neers. Still the crucial developments which led to production by power driven machines did take place chiefly on British soil; it was there that the new factories, metallurgical plants, big coal mines, engineering shops, railroad and steamship were worked out and the resulting social problems had first to be faced.

The workshop of the world exported industrial products to all parts; but soon its customers wished to import industrialism instead, and the encouragement of that importation has figured largely in the politics of most countries. The motive of this state fostering of industrialization was the belief that it was derogatory, disgraceful and dangerous to remain a nation of farmers and handicraftsmen: dangerous because the handicrafts would be destroyed by the competition of imported machine products, because there would be no openings for those whose inclinations and talents were not rural and because the nation could not make its own war equipment; derogatory because the standards of the nineteenth century seemed to place the townsman on a higher plane than the rustic and the man who lived near a factory chimney above the hewer of wood, the shepherd or the cultivator; disgraceful because it was shameful to depend on other nations for the goods that one could and should make for oneself. If China, Japan and India were to count in the eyes of the western world they must westernize their industrial equipment as well as their judicial and educational systems; if Canada, Australia and even the United States were to emerge from colonial status or stature they must cut the ties that bound them to the factories of Lancashire, Yorkshire and the Black Country; if new or reborn nations, such as Germany or Italy, were to make their unity or freedom real they must translate nationalism into factories, mines, banks and statistics of industrial output; and if Russian communists wished to justify their faith and place in a hostile capitalistic world they must teach a nation of peasants how to make electricity, tractors, cloth, electric lamps and cheap matches. Hence the political thought of nearly every nation has been obsessed with problems of protection and self-sufficiency and of nurturing industrial growth in face of the competition of more highly industrialized countries. Only the crack of doom will end the debate concerning the extent to which success, where it has come, has been the result of governmental action in granting tariffs, bounties and the like or has sprung from such other causes as abundant natural

resources, improved transportation facilities, large home markets and the inventive ability, organizing capacity and industrious habits of the population.

In the New World there was some industrial revolution, but many industries came so late that they were able to begin operations on the modern plan. In the United States and to a slight degree in Australia and Canada there was some small scale and domestic industry to be destroyed or superseded. Colonial America had its frontier household manufacture of cloth, clothes, furniture and implements, its farmhouse processing of land and animal products, its charcoal smelting of bog iron, its nail shops, town handicraftsmen; distilleries, potash plants and shipyards. It had some putting out and some artisans who rambled round the countryside or worked in their own shops on materials belonging to their customers; and its flour, fulling or sawmills often treated customers' grain, cloth or lumber. But frontier conditions usually decided that the settler should rely on others only for those goods which he could not make for himself. Gradually most of these occupations passed into factories and workshops; there was a steady shedding of by-occupations by the farmer and a corresponding concentration on his main task. Improved roads, canals and finally the railroad brought a wider area within reach of factory products and spinning wheel, churn and candle mold became antiques. The interruption of Anglo-American relations during the revolution stimulated domestic production, while the period from 1807 to 1814 saw some adoption of machinery and factory organization; tariffs after 1815 helped the textile and iron industries over some of their difficulties with foreign competitors; the westward flow of population called for the production of settlers' effects at such inland points as Pittsburgh; the Erie Canal made it possible to process farm products at such centers as Buffalo and Rochester and to send them to eastern markets; the scarcity of labor stimulated the production of labor saving farm implements and industrial machinery; while engines had to be designed and built suitable to American railroad conditions. But agriculture and commerce remained the chief interests until the Civil War; capital and enterprise found their richest rewards in the unoccupied areas of the west, in the production of staples for the seaboard or the European market, in land speculation, in supplying the stream of settlers and in shipping. The really serious industrialization of the country did not

set in until after 1860; by that time the methods and organization which seemed most suitable had already been worked out in New or old England and only needed to be adapted when adopted. The extension of industrialization to the south of the United States, slowly since 1890, with increasing rapidity since 1914, has again involved the imposition of known industrial techniques on an agricultural economic organization. Australia and Canada had little of the old order to sweep away; their industries could begin on the modern pattern. The South American countries are still predominantly agricultural, the only important traces of industrialization being the penetration of modern methods of finance, large scale plantation organization and the spreading use of machinery in the extractive industries.

In the Near and Far East the machine technique has met a social organization far older and more stable than that which it superseded either in the countries of the New World or in Europe; but here too changes which may be called industrial revolutions have occurred or are in progress. The first of the oriental countries to feel the impact of industrialism was India. Conquest, railways and foreign goods introduced the system. The dissolution of the old princedoms and their courts, followed by the rapid introduction of improved methods of transportation, and the prohibition of the importation of Indian cottons and silks into England had gone far toward destroying the highly developed urban and village industries of India even before the products of English machines appeared upon the Indian market. Loss of older means of livelihood drove increasing numbers of artisans back upon agriculture, and meanwhile the relentless growth of population continued. By 1880 there were many observers who felt that the one solution of India's economic difficulties was the development of modern industries. The factory system appeared first in the 1850's with the building of cotton and jute mills. While the jute industry was developed almost entirely by English capital, the cotton mills were started by native Bombay merchants and the industry has remained largely in native hands. The growth of the cotton textile industry was slow until about 1880, when it began to expand rapidly. As has been true in most countries, machine spinning was at first far more important than weaving, large quantities of machine spun yarn being used by Indian hand loom weavers; even larger quantities were exported to China and for a time to Japan. This

Chinese market was eventually lost to Japan, and after the World War Japan became a formidable competitor in the Indian market itself. Until 1914 India depended entirely upon imports for her machinery and industrial equipment. Early attempts to establish an iron and steel industry failed; and though the stimulus of war demands caused a rapid development of that industry after 1914, it is still unable to supply the country's needs. The war led also to some development of chemical industries, oil and water power. India has today over a million factory workers, and the Calcutta jute mills are large scale units. But industrialism has touched scarcely more than the fringe of Indian life as yet; banking and finance are little developed, and the factory worker is often a villager who has come to town for a few weeks or months in order to earn money to supplement the inadequate income of the farm.

The same is true of China. Attempts at factory spinning of cotton were made as early as 1860 and were successful after 1880. These early mills were owned by Chinese masters, who gathered in their kinsfolk and thus retained something of the family unit. After China's defeat by Japan foreign capital was invested in cotton mills, and a large spinning industry—half Japanese, partly Chinese and slightly British—grew up in the Shanghai area. In that region about 250 factories now exist making textiles and a wide range of other consumer goods, including even fountain pens and gramophones; but elsewhere there has been little industrialization, except in Manchuria under Japanese influence.

The rapidity of the modernization of Japan seems to make the phrase industrial revolution particularly applicable in its case; but it is significant that the commercial and financial transformations have been more far reaching than the strictly industrial. Even before 1868 important changes in economic organization had been taking place in Japan; throughout the eighteenth and the early nineteenth century the feudal system was gradually being transformed by the development of a money economy, including a wage system. Under the modern government of the Meiji era industrialization became one of the first objectives of economic policy. Government subsidies secured by borrowings abroad made possible the construction of railroads and later of public utilities, gas and electric power works. The government established model factories and schools for the training of workers. Nevertheless, the progress of industrialization was slow;

not until after the Sino-Japanese and Russo-Japanese wars did Japan's factory industries develop on any large scale. The World War caused an enormous expansion of all industries and offered an opportunity for Japan to capture the markets of the Orient; but the troubled economic and political conditions of post-war years forced a considerable recession. In 1927 Japan had 49,000 factories employing 1,700,000 workers. The most important factory industries are silk reeling and cotton spinning; but the weaving of cotton is still preponderantly a domestic industry, while silk weaving is negligible. Raw silk remains Japan's principal export and the majority of the population is still agricultural or rural, engaging in handicraft industries as a subsidiary occupation. Japan is already experiencing difficulties in finding an outlet for its cotton yarns or textile goods in India or China, and the development of the heavy metallurgical industries is costly because of its lack of raw materials.

In one sense the vast changes in progress in Soviet Russia do not constitute an industrial revolution, since they do not represent the substitution of one form of industrial organization for another. But this industrialization of an agricultural country is in another sense completely revolutionary. It could occur of course only after the methods and instruments of industrialism had been fully worked out in other countries. The logic of large scale production, the factory system and the machine technique are being adopted more completely in Russia, through their extension to agriculture, than anywhere else. The pattern of industrialization, which has been much the same for most countries, is completely changed in Russia. The heavy industries are being developed first rather than last; industrialization, while depending on foreign aid and the exports necessary to pay for it, is not based on a foreign market for consumers' goods. The social consequences of the industrial revolution in Russia are also vastly different; great as the hardships involved may be they fall most heavily on such classes as the kulaks and the merchants, not on the factory worker. Russia possesses all the natural resources necessary for a most complete development of the machine industries; a labor force is in process of creation. It is easy to overestimate the rapidity of progress, but these changes do have a spectacular quality which the first industrial revolution never possessed even in retrospect.

<sup>4</sup> In all lands where it came to displace an established industrial structure the industrial rev-

olution ran a roughly similar course. The textile industry was usually the first to be affected, then the making of clothes, metal articles and food-stuffs; the large scale manufacture of iron and of steel represented often a distinct step forward but one not easy to take, while the manufacture of machines and producers' goods generally was a hazardous venture. Indeed it is this final step toward complete industrialization which has been most difficult for more recently industrialized countries. In lands coming late to industrialism the easiest success has been won in industries which process the natural or farm products, which produce simple wares such as blankets or plain cotton pieces or which enjoy the natural protection of distance from possible competitors.

Migration of industry from manual domestic or shop conditions to the factory varied in speed from industry to industry. Spinning went quickly; weaving, knitting and some metal trades passed through a transitional workshop period, in which workers were gathered under one roof but continued to use the old equipment. In the clothing industries the sewing machine could be used in the home, and many women clung to the putting out system but had to submit to sweated conditions. The shoemaker and hand loom weaver put up a long fight, and the victory of the laundry and bakery is still far from complete in Europe.

Dependence on coal and water power led to industrial concentration on the coal fields, river valleys and such belts as the fall line in America. Water power had only a limited effect in causing concentration, for it strung the factories all along the banks of rapidly flowing rivers, and for certain textile washing processes an ample supply of water was almost as important as a supply of fuel or power. Where water and coal were found together, as in the Pennine valleys and eastern Belgium, industry was spread over the whole region in villages or towns. For the metal industries location was determined by the coal supply, since it was easier to bring the metal to the coal than vice versa; but this involved the construction of adequate transport facilities, such as the railroad between Lorraine and the Ruhr.

The movement of population to the industrial areas still needs further study. But for England it is now evident that there was no simple mass transfer of people from the south and east to the north and west. The industrial towns grew by drawing workers in from the hinterland, and the void thus made was filled by people from

slightly further afield. Journeys were generally short, except in the case of the Irish who swarmed across the Irish Sea to Lancashire, Glasgow and Yorkshire. Only later, when the railroads made longer journeys easier, was there any serious long distance migration. In newer countries, such as the United States, native population was for long streaming away from the eastern industrial centers and a continual inflow of immigrants was necessary to insure an adequate labor supply.

Problems of urban health and housing were probably most acute in those towns which were the homes of the early spinning factories. In looking at them it should be remembered that until 1835 many British manufacturing centers had no adequate municipal government, that knowledge about the essentials of public health was scanty, that cheap production of pipes, bricks and woodwork did not come until about 1840, that house building depended on the willingness of someone to sink capital in dwellings and that the rate of interest current or the profits to be made in industry might be more tempting than the return on house property. A glance at the housing of the poor in non-industrial towns of the eighteenth century and at the difficulties which have surrounded the provision of working class dwellings since 1914 should provoke a more merciful judgment of the "jerry builder" of the early nineteenth century. In the United States living conditions in the early textile towns of New England were very good; only with the coming of wave after wave of foreign laborers did the worst slum conditions appear.

Of labor conditions no easy generalization is possible. Long hours, child labor, employment of women, insanitary conditions, payment in truck, unemployment, low wages, capitalistic tyranny, labor unrest, industrial fatigue, occupational diseases and the "cash nexus" were not inventions of industrial factory capitalism. Night work was a new thing in the textile industries; but the only novelty about child labor was that children now worked in large groups, were subject to factory rather than parental discipline, discharged more responsible tasks, had to leave the hearth to work and were kept rigorously at their day or night tasks. It should be noted, however, that child labor was universally regarded as natural and that the children's earnings were larger in the factory than they had been at home. When child labor was forbidden, something else—education—had to be developed to fill the waking hours of the young. The

hazards to life and limb might perhaps have been prevented before they were attacked by legislation but they had first to be recognized as such, and the apathy toward them was as marked among the operatives as among employers. Such conditions and attitudes repeated themselves in most countries or regions where the factory system was introduced.

As to wages and employment light and shade alternate. In the early stages the new industries, especially cotton and pottery, seem to have paid much higher wages than were prevalent in the older industries, and the demand for hand loom weavers to cope with the flood of machine made yarn raised the rates paid for weaving. In England the long war with France lifted many nominal wages and some real ones, but the slump after Waterloo lowered levels in industry and agriculture alike. The hand loom weaver and some other manual workers suffered when they stuck to their benches in face of the machine; but elsewhere conditions seem to have improved because of rising wages and falling prices after about 1820 or 1830. Some occupations passed from male to female hands, but new occupations were opened up and old ones expanded—metallurgy, mechanical engineering, the construction and operation of railroads, shipbuilding, mining, building—and the opportunities for skilled well paid work multiplied accordingly.

In short, the industrial revolution increased rather than decreased the material welfare of the mass of the population; but some sections suffered from the transition, war and business fluctuations disturbed wages and prices and the dangers latent in the employee's lot became apparent. Unfortunately much of our view of the social aspects of the revolution is drawn from reports of official investigations, which in their very nature are full of complaints and grievances. From them one can paint the industrial revolution as "an orgy of soulless cupidity" (Tawney) and assume that to be the whole picture. But quantitative studies such as that by Clapham; detailed business studies of Oldknow, Owen, Wedgwood, Boulton, Gott, Krupp and others; and a more detailed knowledge of pre-revolutionary conditions tone down the picture and make at least some of the industrial leaders appear more like human beings and less like incarnations of ruthless self-interest. Moreover it is still far from certain how much the revolution was "a triumph of the spirit of enterprise" (Tawney). Enterprise there was but not always triumph, and the industrial field was strewn

with the wreckage of men who failed. The trouble with machinery that broke down, with workmen who refused to use it, with customers who demanded long credit yet refused to pay their debts, with booms that burst, with banks that refused any more loans, with wars that closed markets, all made the road stony. Inadequate supplies of working capital wrecked many a venture, and when a successful period came the profits had to be plowed back into the business. The industrial revolution has not yet been studied through the records of bankruptcy, but enough is known to show on what a treacherous sea the entrepreneur of the early machine age launched his boat.

HERBERT HEATON

*See:* INDUSTRIALISM; FACTORY SYSTEM; ORGANIZATION, ECONOMIC; GUILDS; PUTTING OUT SYSTEM; CAPITALISM; SCIENCE; INVENTION; MACHINES AND TOOLS; TECHNOLOGY; POWER, INDUSTRIAL; LOCALIZATION OF INDUSTRY, LARGE SCALE PRODUCTION; RAILROADS; TEXTILE INDUSTRY; IRON AND STEEL INDUSTRY; METALS; BANKING, COMMERCIAL; CREDIT; CORPORATION; MARKETING; IMPERIALISM; LABOR; HOURS OF LABOR; WOMEN IN INDUSTRY; LABOR MOVEMENT; URBANIZATION.

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# Industrial Revolution — Industrial Workers of the World 13

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## INDUSTRIAL UNIONISM. See TRADE UNIONS.

**INDUSTRIAL WORKERS OF THE WORLD.** The Industrial Workers of the World, a revolutionary industrial union, was organized in 1905; its object is to organize the working class industrially not only for the everyday struggles against employers but for the final overthrow of capitalism. It was originally a socialist organization but since 1908 it has combined the indigenous American doctrine of industrial unionism with the ideology and practises of syndicalism.

The emergence of the I. W. W. was the result of the convergence of two forces: the frustration in the east of the socialists who wished to commit the American Federation of Labor and the Knights of Labor to socialist programs and the sharp differences beyond the Mississippi between the socialist Western Federation of Miners and the conservative, opportunist American Federation of Labor. In the early nineties Daniel De Leon and his followers in the Socialist Labor party were aggressively working in the east to convert to socialism the two chief national labor bodies of the country—the declining Knights of Labor and their vigorous competitor the A. F. of L. These efforts failed and the De Leonites, insisting that the conservative unions hampered the emancipation of labor, organized in 1895 the Socialist Trade and Labor Alliance, which was avowedly socialist and revolutionary. The alliance created considerable agitation but was not a success; dissatisfaction with these manoeuvres of the De Leonites, which were linked up with fundamental differences involving revolutionary and opportunist conceptions of socialism, led the opportunist faction to bolt the Socialist Labor party and at the turn of the century to set up the Socialist party, which opposed organization of dual unions and advocated "boring from within" the A. F. of L. Soon after its organization in 1893 the Western Federation had affiliated with the A. F. of L. but broke away in 1897; it waged ten great strikes during the period 1893 to 1903. In 1898, three years after the launching of the alliance, the Western Federation set up the Western Labor Union (after 1902 the American Labor Union), of which the federation itself



was the chief constituent. The American Labor Union was an industrial union, class conscious and strongly socialist; it proposed industrial unionism and independent political action "of all wage workers" as "the only method" of working class emancipation—in essentials the program subsequently adopted by the I. W. W.

By 1904 both the alliance and the American Labor Union were extremely weak—the one a purely propagandist body, the other important only as the expression of the Western Federation of Miners. Meanwhile new and aggressive labor struggles provided an opportunity for the agitation of revolutionary unionism. The defeat of the steel workers' strike in 1901 glaringly revealed the limitations of craft unionism; the victory of the coal miners one year later stirred labor everywhere. There was an increasing discussion of the need for a new labor organization, as the result of which a constitutional convention met in 1905 and organized the Industrial Workers of the World. The most important organization represented in the convention was the Western Federation of Miners; other organizations were the alliance, the American Labor Union, the United Metal Workers' Industrial Union and a few disaffected locals of the A. F. of L. There were also a number of individual delegates from both the Socialist Labor party and the Socialist party. The proceedings were dominated by De Leon, William D. Haywood, Eugene V. Debs, William E. Trautmann and Vincent St. John.

The I. W. W. arose primarily out of dissatisfaction with the craft unionism and conservative policies of the A. F. of L. The latter had repudiated the Knights of Labor policy of organizing all the workers, skilled and unskilled; its constituent unions were composed overwhelmingly of skilled workers among whom craftsmanship was still an important factor, and these unions refused to organize the unskilled workers (e.g. in the iron and steel industry). The I. W. W. on the contrary proposed to organize all wage workers, regardless of craft distinctions; it proposed moreover to organize them into industrial unions which would embrace all the workers in a particular plant, enterprise and industry. The I. W. W. thesis was: machinery is rapidly eliminating the craftsman's skill; the unskilled workers are becoming preponderant and it is necessary to organize them; without the organization of these workers into industrial unions, an integrated unionism paralleling the integrated structure of modern industry, it is impossible to wage effective

war on the great combinations of capital. The craft structure of the A. F. of L., insisted the I. W. W., is not only incapable of organizing all the workers but develops the conservative policy of defense of exclusive craft interests (frequently at the expense of the unorganized workers) instead of the revolutionary policy of the overthrow of capitalism.

Although the I. W. W., including its predecessor the American Labor Union, was strongly influenced by the traditions of earlier experiments in radical unionism, it made important departures. The I. W. W. accepted the Knights of Labor idea of organizing all workers including the unskilled but it repudiated the K. of L. leaders' middle class ideology and adopted a definitely socialist policy. The I. W. W. agreed with the Socialist Trade and Labor Alliance that unions should organize for the overthrow of capitalism, but it substituted industrial unionism for the craft unionism of the alliance. This industrial unionism was an essentially indigenous product and constitutes an American contribution to revolutionary labor theory and practise; it grew primarily out of the rapidly increasing concentration of American industry. This concentration, in socialist theory, represented the socialization of production upon which socialization of industry and socialism depend; the I. W. W. accepted that conclusion but added a new concept—the industrial unions, paralleling the integration of industry, would become the basis of the future socialist society (whence the theory of "forming the structure of the new society within the shell of the old"). This conception was given its most brilliant formulation by De Leon, who considered it the fulfilment of Engels' theory that the government of socialist society would be an "administration of things"; Lenin accepted the conception as an adumbration of the Soviet system and as the ultimate form of government in communist society.

Within one year a split took place in the I. W. W., which led to the secession of the Western Federation of Miners, depriving the new organization of nearly one half of its 60,000 members. The split involved issues of revolutionary or moderate tactics and left control in the hands of the more revolutionary elements under De Leon, Trautmann, St. John and Haywood.

The secession did not, however, end internal controversy; a new struggle developed between the advocates and opponents of political action. Although in theory the I. W. W. was a product

of modern concentrated industry it drew its strength from casual labor in the west and immigrant workers in the east, men who by the nature of their work and social position had no stake in voting and who developed an antistate complex. This complex was emphasized by the frontier traditions of "direct action" which influenced western workers. In consequence a strong antipolitical tendency developed, aggravated by the struggle for party influence within the I. W. W. between representatives of the Socialist Labor party and the Socialist party. De Leon opposed the antipolitical tendency, emphasizing the Marxist conclusion that "every class struggle is a political struggle." The controversy over political action came to a head at the 1908 convention. The De Leon delegates were expelled and thereupon set up a rival I. W. W. with headquarters in Detroit, but it was never more than a propagandist group. It declined with the general decline of the Socialist Labor party, changed its name in 1915 to the Workers' International Industrial Union and struggled on to formal dissolution in 1925. The majority I. W. W., sometimes called the anarcho-syndicalist group, espoused revolutionary industrial unionism without affiliation or cooperation with any political party. The antipolitical bias of the groups now dominant in the I. W. W. was reinforced by syndicalist theory. But there were important differences between syndicalism and the I. W. W. The I. W. W. was an industrial union, while the European syndicalist groups were essentially craft organizations; moreover, where syndicalism envisaged the future society in terms of autonomous, loosely federated producers' groups, the I. W. W. proposed a more integrated economic organization of society and more highly centralized social control—the fundamental difference between the anarchist and the socialist conceptions.

In the midst of controversy and secession the I. W. W. was becoming a militant expression of class war in the United States. It made its appeal to all wage workers regardless of occupation, creed, color or sex, attempting to link up the immediate struggle with the necessity for the overthrow of capitalism. It opposed the intervention of intermediate agencies, such as the state, in labor's struggles with the employers and emphasized direct action in the form of strikes, boycotts and so on but not collective bargaining, which it considered an interference with labor's only weapon, the strike. Unlike the A. F. of L., which considered time agreements necessary

and sacred, the I. W. W. rejected them because such contracts make it more difficult to declare strikes at moments most embarrassing to the employers. The I. W. W. avoided violence and sabotage in spite of the emphasis on direct action; it talked much of those tactics but did almost nothing to apply them. Its tactics included intermittent strikes and strikes "on the job." In the course of its history the I. W. W. directed or participated in not fewer than 150 strikes, the most important of which were the Goldfield, Nevada, miners' strike of 1906-07; the Lawrence, Massachusetts, textile workers' strike of 1912; a lumber workers' strike in Louisiana in the same year, in which many Negro workers participated; the Paterson, New Jersey, silk workers' strike of 1913; and the iron miners' strike on the Mesabi Range, Minnesota, in 1916. The period from 1905 to 1914 was one of rising prices and stationary real wages, of aggravated labor discontent; these conditions provided an opportunity for I. W. W. militancy, and its activities were considered a serious revolutionary threat. Most of the I. W. W. strikes were marked by severe repression on the part of the public authorities; and along with their strikes the I. W. W. waged numerous "free speech" fights when their attempts to organize were interfered with. Arrests and convictions were numerous. The strikes were marked by temporary accessions to the I. W. W. ranks, the frequent winning of some or all of their demands and, at the end, abandonment of the battlefield without any serious attempt to build up a stable organization. This defect in I. W. W. tactics was aggravated by the difficulty of organizing unskilled workers, particularly when they were foreign born and spoke many languages.

During the World War the I. W. W. took an antimilitarist position, opposed the participation of the United States in the war and continued to organize strikes in spite of the truce proclaimed by the A. F. of L. The government acted swiftly and drastically; 166 of the I. W. W. leaders were indicted, 113 arraigned and tried and 93, including Haywood, convicted; they all received severe sentences, twenty years' imprisonment in the case of the more important leaders. The post-war years were marked by further prosecutions of the I. W. W. under the criminal syndicalism statutes of various states. In Washington agitation and strikes among the lumber workers aroused considerable tension; on Armistice Day, 1919, a group of American Legion men in Centralia attacked the I. W. W. hall

and met forcible resistance. In the struggle four legionaires were killed and a number of I. W. W.'s arrested; seven were sent to prison for from twenty-five to forty years; and although seven jurymen have since repudiated their verdict and there is a general demand for their release, the I. W. W.'s are still in prison. Wholesale prosecutions effectively broke the strength of the organization for a period of years—perhaps permanently. They forced it to concentrate what strength it had upon legal defense and campaigns for amnesty. Its energy was further sapped by bitter internal controversy over the conditions on which its members should accept amnesty. The I. W. W. played no part in the great strike movement during the period 1919 to 1922.

This decline was sharpened by I. W. W. losses to the communists. The communist revolution in Russia profoundly influenced the I. W. W., some of whose former members were active in the Bolshevik party. At first the I. W. W. was sympathetic to the Bolshevik Revolution; but as communist theory and practise with their emphasis on a political party and the capture of the state were better understood, a violent controversy over communism broke out. The controversy was aggravated by the organization of an American Communist party which struggled for hegemony over the revolutionary movement. An appeal issued in 1920 by Gregory Zinoviev in the name of the Communist International recognized the "long and heroic service of the I. W. W. in the class war" and urged it to join the International; the appeal said that the existing revolutionary situation did not permit of waiting until "the new society is built within the shell of the old," that the struggle of the workers must be a struggle for political power and that the I. W. W. theory of the general strike is incomplete unless it includes the final necessity of armed insurrection. The appeal was rejected; the I. W. W. emphasized its syndicalist orientation and became increasingly hostile to communism and the Soviet system. The Communists, however, were aided in the struggle by the fact that their program included fundamental elements of the I. W. W. program (as well as that of the Socialist Labor party); on the whole the I. W. W.'s have been Bolshevik and anti-syndicalist in their concepts of industrial unionism and the structure of the new society and syndicalist and anti-Bolshevik in their rejection of political action. The essential theoretical differences are: the I. W. W. believes in the gradual

acquisition of control of industry by economic action "on the job" and has no clear idea of how the final overthrow of capitalism is to be accomplished; the Communists accept industrial unionism but insist that it is necessary to overthrow the capitalist state and organize a dictatorship of the proletariat in order to build up the new society. These differences were at first a matter of discussion, and the Communists tried to win over the I. W. W.; in recent years the differences have become practical and have assumed the form of an open struggle for leadership over the revolutionary labor union movement. The Communist organization, the Trade Union Unity League, is opposed to the I. W. W. as well as the A. F. of L. In this struggle for leadership the I. W. W. has rapidly lost ground to the Communists. Left wing strikes which in pre-war days would have been led by the I. W. W. are now led by Communists. Many prominent I. W. W. leaders, such as Haywood and William Z. Foster, joined the Communist party, and an appreciable proportion of this party's membership is composed of former members of the I. W. W.

In 1924 the I. W. W. suffered a serious split over the question of centralization of power within the organization. Still smoldering differences regarding amnesty were also involved. The so-called Emergency Program, or E. P., faction, supported especially by western groups, favored the loose federation of highly autonomous locals. The eastern, or Administration, group favored continuance as an amalgamation of local units subordinated to a highly centralized national organization. The decentralizers were defeated but set up a Reorganized Faction with headquarters in Portland, Oregon, and formulated an emergency program calling for the abolition of certain national offices and the per capita tax to the general administration. In July, 1925, the E. P., or Reorganized Faction, adopted a new constitution which provided for the decentralization of the industrial divisions of the organization, called industrial unions, into job branches having local autonomy. Although this faction is still in existence it has even less influence than the dominant administration group. In Los Angeles it publishes a monthly paper, the *New Unionist*, which is extremely syndicalist in its theory and strike tactics.

The enrolled membership of the I. W. W. has never been large and has always been of a shifting, unstable character. The organization probably reached the peak of its popularity and

prestige at the time of the textile workers' strike in 1912, when it may have had 100,000 members. During the post-war period its membership and influence have been low and steadily declining. In 1930 it probably numbered less than 10,000 members.

Few skilled workers have been attracted by the I. W. W. Its strength has always lain in its effective appeal to the casual and migratory worker in particular and the unskilled worker in general. These groups, which the A. F. of L. has largely ignored and failed to reach, the I. W. W. has successfully recruited. Its more important branches are made up of such workers in lumbering, construction, agriculture, longshore work and marine transport. It has been strongest on the Pacific coast and in the wheat belt but has succeeded temporarily in the textile mills of Massachusetts and New Jersey, in the lumbering industry in Louisiana, in the coal mines of Colorado and in the oil fields of Oklahoma. Its chief centers of influence in 1930 were the wheat belt, the northwest woods and the docks of the chief port cities. It attracts most strongly the immigrants and the native Americans who drift into migratory work. Its leaders have for the most part been Americans, although some foreigners, especially Italians, have played active roles in its affairs. The activities and influence of the I. W. W. have been confined almost entirely to the United States and Canada, although there have been set up "foreign administrations," which simply reflect the propaganda activity of seagoing I. W. W.'s. The organization has no other international affiliation.

Of crucial significance is the practical result of the I. W. W.'s inability to combine effectively the struggle for immediate improvements with the struggle for final working class emancipation, a defect aggravated by its guerilla strike tactics and lack of organizational solidity. The result is that the I. W. W. has been far less successful as a disciplined labor union than as an organization of propaganda and protest. Unless immediate benefits can be offered—and won—workers do not stay in unions. This is why, although the I. W. W.'s have staged numerous strikes and free speech fights, these dramatic activities have borne little or no fruit so far as permanent, stabilized organization is concerned.

Although there have been among the I. W. W.'s not a few "two-card" men, holding union cards in some A. F. of L. union as well as in the I. W. W., the relations between the I. W. W.

and the federation have been for the most part bitterly hostile. The I. W. W. was conceived in hostility to the federation and since 1905 has been a most persistent critic of that organization and its policies. The federation, which is opposed to both syndicalism and communism, is highly conservative and represents primarily the interests of the skilled craftsman; the I. W. W. is radical and represents the unskilled worker, who is ignored by the A. F. of L. and whose interests demand more aggressive action. The two organizations typify sharply contrasted points of view—on doctrine, on tactics, on form of organization—as well as sharply contrasted groups of workers to whom they appeal. Many clashes have occurred between the I. W. W. and the A. F. of L.; the two organizations have denounced each other consistently and interfered in each other's strikes. During I. W. W. strikes the A. F. of L. unions of skilled workers would refuse to come out and were in consequence accused of "organized scabbery." These antagonisms are not simply a product of theoretical differences; they express the conflict of interests between the skilled and unskilled workers, the organized and unorganized, which constitutes an important aspect of the American labor movement.

The I. W. W. has been a significant influence in the American labor movement. Unquestionably it galvanized the A. F. of L. into taking more interest in the organization of unskilled labor; amalgamation proposals in the A. F. of L. are one result of the I. W. W. propaganda for industrial unionism. The industrial structure of some of the newer unions, like the Amalgamated Food Workers and several unions organized by Communists, such as the Needle Trades Industrial Union, is to be traced in part to the I. W. W.; indeed industrial unionism is an accepted idea of American communism. The I. W. W. has been responsible indirectly for state legislation more adequately to control private labor exchanges. It improved conditions among many groups of workers, especially in the lumber camps, and it has made it easier for Negro workers to organize into unions; in fact the I. W. W. was the first labor organization which actively organized the Negro. There is, finally, the influence of the I. W. W. upon the communist movement. The I. W. W. was an American expression of the revolt against moderate socialism which developed in all sections of the international socialist movement. In the pre-war days the I. W. W. stimulated the development

of a strong left wing group in the Socialist party; the struggle between revolutionary and opportunist was waged over the issue of industrial unionism. During the war the new left wing, which led directly to organization of the Communist party, was influenced, although in minor degree, by I. W. W.'s, while the Communist party now claims the revolutionary heritage of the I. W. W.

PAUL F. BRISSENDEN

See: LABOR MOVEMENT, DUAL UNIONISM; SYNDICALISM; CRIMINAL SYNDICALISM; DIRECT ACTION, VIOLENCE, SABOTAGE.

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**INDUSTRIALISM.** Every age and every people has a character stamped upon it by the way it gets its bread. This is true not only of the modern era, which has been called the age of industrialism, but of all eras from the beginning of man's time on earth. It is as true of prehistoric peoples or of the ancient world as of modern Britain or the United States. Modern industrialism did not create man's dependence on his means of living or first cause society to take a shape governed by the nature of his economic

activities. It only sets a new shape in place of the old and causes societies to organize themselves in different ways.

Industrialism represents essentially a particular stage in human knowledge and in man's command over nature—a stage at which man has learned the arts of machine production and the use of mechanical power on a large scale but has not yet become so much the master of these new arts as to bring them to full maturity or under fully satisfactory control. It is a phase in material progress, but only a phase, destined to be superseded when its development has become sufficiently complete.

The point has not yet been reached when the world will have so thoroughly solved the problem of producing material wealth that it will cease to be a problem at all and men will be left free to turn their attention to the satisfaction of other needs and desires. Nor can one expect such a point to be reached over the world as a whole for a long time. Indeed in many countries poverty due to the underdevelopment of productive power is still by far the most pressing economic problem. The masses in China and India are still desperately poor, not from unemployment or misdirection of productive energy but from sheer inability to produce enough to provide a reasonable standard of living. Their great problem is still to increase production in order to raise their own power to consume.

But in the great industrial countries of Europe and America the situation is rather different. Not that enough is being produced to give all the citizens even of these countries a satisfactory standard of life—but in their case the further increase of actual production seems to be held back far less by a failure of productive power than by an inability to find means of distributing the increased real wealth which they are in a position to produce. Their problems are primarily unemployment, unremunerative prices, lack of proper balance between the output of different kinds of goods, dislocation of regular trading relationships between countries and a creaking of the financial mechanism by which the exchange of goods has to be carried on. They could produce far more with their existing resources than they are producing at present; but they cannot do this because there is something seriously wrong with their methods of distributing and exchanging wealth. And there seems little chance that their powers of production will be allowed to develop as they could until these fatal defects in the structure of indus-

trial society have been somehow remedied. Meanwhile production and the standard of life advance only by fits and starts; and progress is again and again interrupted by crises which cause the industrial nations deliberately to restrict their output of goods in an endeavor to create scarcity in place of a plenty which they have not learned to control.

How does such a situation arise? Obviously the power to create more real wealth ought to be the means to a higher standard of living for the community as a whole. Obviously on the whole and in the long run it has hitherto been so—witness the great advance in the real incomes of all classes in industrial countries during the past century. But it is no less obvious that this advance is less than it might be if the existing powers of production were being used to the full, and that even so it is made precarious by the liability of the economic system to recurrent crises and business depressions.

Industrialism is fundamentally an affair of productive technique. It is based upon the discovery and exploitation of improved methods of producing wealth, primarily in the processes of manufacture but also to an increasing extent in agriculture and in the extractive industries yielding primary products. It is closely associated with an increase in the scale of production, with the development of capitalistic methods in both manufacture and marketing and with the employment of wage labor. Its secondary effects have included hitherto a concentration of the population in densely inhabited urban areas, a very rapid increase in the volume of international trade, much lending of capital for development by the more advanced countries to those less advanced and a very rapid increase in the numbers and social importance of the middle classes, including those engaged in the professions as well as in the administration and supervision of industry and commerce.

At the basis of industrialism is the machine. Both capitalism and wage employment are much older than industrialism in the sense in which the term is used in this article; and there were many factories before there was a factory system based on mechanical power. But industrialism can be said to have begun when machinery driven by a central supply of mechanical power became the typical method of manufacturing production. For from that point industry replaced commerce as the directing force of economic life, and the scale of production and the forms of business organization came to be deter-

mined by the growth and character of mechanical power.

Thus in England, where the industrial revolution proceeded a stage ahead of its development elsewhere, the industrial employer step by step ousted the merchant from his previous predominance. The typical rich men of the seventeenth and the early eighteenth century were merchants and financiers engaged in buying and selling goods gathered together from a host of small scale producers. The few big employers who did exist were not typical. The rich clothier whose memory is kept alive by his monuments and benefactions in countless English churches was not primarily an employer of labor but a merchant, although the position of the small producers who supplied him with the goods he distributed may often have differed little in effect from that of wage workers. The bourgeois class to which the aristocrats of England and France before the great changes of the eighteenth century were compelled to pay some attention was above all a class of merchants.

The industrial revolution, based upon a great series of mechanical inventions and above all else on the economic utilization of steam power, radically changed the situation. It substituted for a relatively static system of production an essentially self-expanding technique. The merchant of the seventeenth or eighteenth century had indeed an incentive to expand his sales as a means to additional profits. But there was for him as a rule no economy in buying on a large scale or in larger total amount, since the small producers who supplied him could not produce more cheaply merely because they were asked to produce more. It is a commonplace among economists that handicraft production tends to obey a law of "constant cost" and indeed that, if additional workers have to be pressed rapidly into the service in order to meet an expansion of demand, costs will tend to increase on account of both the greater demand for labor and the less skill of the new labor attracted into the trade. This was undoubtedly the position in hand loom weaving in the eighteenth century, in the "golden age" of the hand loom weavers that preceded the introduction of the power loom. The desire of the eighteenth century merchant to purchase more goods from the small producers was therefore conditional on his ability to sell more without reducing the price or even while increasing it; and this, owing to the rapid expansion of trade with both America and the East, he was in fact often able to do.

But as fast as machine production based on mechanical power superseded handicraft, the situation was radically altered. Until then the pace of production had been set by the orders of the merchants, to whom the producers were for the most part merely subservient. But now under the new factory system the industrial employer himself had not only an incentive to get as large orders as he could but also a means of stimulating the merchant's demand. For in most cases he could produce more cheaply by increasing his output; and he was therefore, unlike the handicraftsman, in a position to offer the merchant goods at lower prices if only the merchant would increase his purchases. This enabled the merchant in his turn to take new steps in stimulating demand by offering goods at lower prices to the consumer both at home and abroad, and the increased orders given by merchants under these conditions reacted upon industry. But the initiative in the new system passed more and more into the hands of the industrial employer, whose offers of more goods at lower prices became the driving force of material progress. From this point of view the coming of industrialism was in manufacturing industry the transition from a condition of constant to one of decreasing costs.

The industrial employer, who thus became the pivot of the new economic system, found himself urged on to new conquests by the pressure of the machine itself. He had to be abreast of his competitors in reducing prices; and this was a perpetual incentive to him both to increase his scale of production and to avail himself of the improved machines that were constantly being produced. There was doubtless, even when the industrial revolution was at its height, an optimum size for any given business beyond which it could not grow without loss of productive efficiency. But as the optimum was growing larger with very great rapidity, the great majority of businesses were probably well below it and racing to catch up. Accordingly machine technique gave the employer the greatest possible stimulus to increase his scale and quantity of production in order to cut his prices and thus enabled the merchant to take full advantage of the elasticity of demand, especially in oversea markets.

This last qualification is necessary because the strong competitive pressure on employers to reduce costs and prices, while it was a powerful stimulus to improved productive technique, reacted unfavorably upon the level of wages and

therefore upon the consuming power of the domestic market. The employer could cut his costs not only by improving the efficiency of production but also by reducing wages or taking a firm stand against their increase; and this course appealed strongly to the less efficient employers, who were threatened otherwise with extinction. Relatively few employers could be brought to believe in Robert Owen's doctrine of the economy of good wages and conditions; and perhaps relatively few were efficient enough to make it true in their own case. The rapidly falling costs of the new industrialism were based on low wages as well as on a rapidly improving technique of production.

There was a second and no less powerful reason why wages and consuming power in the home market remained low in the period following the advent of industrialism. The new employers under a constant necessity of improving their machinery and expanding their scale of production were avid for fresh supplies of capital which they could apply to these purposes. But capital was hard to find in the days before the recognition of limited liability and the working out of the modern solution of joint stock companies and corporations based on widely diffused and easily transferable shares. The employer was therefore compelled to expand his business out of his own resources as far as possible, living frugally himself and putting back his profits as capital. Under this pressure he was disposed to resist demands for increased wages as sheer waste, the devotion to useless expenditure of resources badly needed for the expansion of output.

It is true that money thus saved was spent on buildings and machinery. But the constructional trades, powerfully stimulated as they were by these new conditions, did not quickly respond to the new technique or pass over from handicraft conditions of constant cost to conditions of decreasing cost. Building remained and remains in part even today a handicraft industry in which prices tend to rise rather than fall with any quick expansion of demand. And machine making continued for a long time to be a highly skilled job, demanding the services of highly skilled craftsmen who were limited in number and incapable of being reorganized on a basis of mass production. Not until the methods of producing iron and steel and of forging and casting had been revolutionized in the latter half of the nineteenth century did the engineering trades become at all generally subject to the conditions

of decreasing cost which had come to prevail in the cotton trade more than fifty years earlier. Consequently spending on building and machinery did not expand production in the same degree as spending on consumers' goods, which were on the whole more easily mass produced. This helps to explain the intense concentration of the new industrialism on the development of exports and the constant search for new markets abroad.

Industrialism grew then at first chiefly in the textile trades, making Manchester the effective capital of the new industrial world. It was no accident that the economists who based their doctrines upon industrialism in this first phase came to be called the Manchester school or that their outstanding dogma was a supreme faith in *laissez faire*. For their own experience seemed plainly to demonstrate the self-expansive nature of the new industrial system, its capacity constantly to increase the supply of goods while lowering their cost, and the value of competition in weeding out the inefficient producers and compelling the survivors always to adopt the latest advances in technique on penalty of being left behind in the race. What could be better than a self-acting system which at once benefited the consumer by lowering prices, rewarded the efficient with the high profits of the pioneer and weeded out the inefficient who misused the resources of production? It was not clearly seen at this stage how far those results depended on the superior efficiency of Great Britain over other countries, of whose markets she was therefore able to take her pick, or how low wages must retard the growth of consuming power in the home market. These difficulties came later; and before they had been fully realized the character of industrialism had been greatly changed.

For in time the new technique was extended from industry to industry until it came to embrace the industries producing capital as well as consumers' goods. The development of railways played a dominant part in this transformation, not only because the railway enabled the interior of countries and continents to be opened up for economic exploitation but also because the demand for railway material gave an enormous stimulus to the metal trades and compelled them to devise and resort to mass production methods. The new steel making processes of Bessemer, Siemens, and Gilchrist and Thomas gave the metal using industries for the first time a reliable and durable raw material to which methods of standardized production could be applied and

thus made possible the development of large scale enterprise in the engineering and kindred trades as well as in the translation of shipbuilding from wood to metal. The same causes revolutionized the coal industry, greatly expanded already in the earlier phases of industrialism, and created a new and powerful grouping of "heavy industries" to balance the older textile trades. With the coming of these new forces the authority of Manchester began to wane; and industrialism, no longer so fully wedded to *laissez faire* and competition, entered on a new phase which led on before long to the growth of trusts and combines, the reoccurrence of tariffs and in general to a renewed attempt at regulating just those processes of production and sale which the Manchester school held should be left severely alone.

The explanation of this difference is not hard to find. In the first phase of industrialism the maximum expansion of wealth could be secured by concentrating as far as possible on those forms of production which most clearly showed their obedience to a law of decreasing costs—in other words, primarily upon textiles. This could be done as long as there was adequate scope for the expansion of the sales of industrialized countries in markets where native producers were well behind in efficiency. But in time it became clear that this expansion could not continue unabated unless steps were taken to develop the complementary powers of production of these less industrialized countries so as to increase their supply of goods which they could give in exchange for the mass produced manufactures of industrialism. The railway was the great instrument of this development, opening up in the less industrialized countries vast new sources for the supply of raw materials and foodstuffs. Incidentally this expansion helped greatly to raise wages in the industrialized countries, both because it enabled export to go forward at a greater pace and because it secured an abundant supply of cheap foodstuffs. In the fourth quarter of the nineteenth century there was a rise in both money wages and the purchasing power of money with the result that a great stimulus was given to consumption in the home markets of the industrialized countries.

In building railways and in supplying railway material and later in the supply of machinery produced on a large scale the industrialized countries advanced to a new type of export trade vitally different from the old. The sale of cotton textiles or woollen goods was essentially a cash



transaction to be balanced at once by an equivalent purchase of goods. But the sale of railway material and other classes of capital goods could not be conducted on these terms, for the purchase price could be paid by the buyers only if and when the railway or the factory became productive. Payment for such exports had to await the economic development of the countries to which they were sent and had then to be made in the products which their use had caused to be created. Consequently this second phase of industrialism was marked by a great increase in the export of capital—that is, in the loan of capital in order to make possible the export of capital goods—from the industrialized to the less developed parts of the world. Great Britain especially exported huge masses of capital to all parts of the world and above all to its own dominions and India, to the United States and to the South American republics. Capital was exported also to the continent but was as a rule more speedily repaid and railways and factories built with British money were bought back by native investors.

It would be far beyond the scope of this essay to describe the reactions of this growth of foreign investment on world politics and international rivalries and on the development of economic imperialism; here only its effects on industrialism in a narrower sense can be considered. It made possible a very rapid growth of the industries producing capital goods and speeded up in them the development of an intensified technique of mass production. Whereas in the first half of the nineteenth century the typical instance of large scale production was a cotton mill, by its close the types of large scale enterprise were to be found above all in the heavy industries in the great steel making plants of Bethlehem or Middlesbrough, the great armament factories, the shipyards and the great coal mines already closely linked with steel. In the heavy industries there was already a growing tendency for combination to replace competition and for the size of the business unit far to transcend that of the single manufacturing plant.

Even before this period technical development had begun to influence business structure. As has been noted, the earlier industrialists were sorely hampered by shortage of capital. There was no investing public in the modern sense and broadly speaking no one could invest money in industrial development unless he either lent it to a business man on his personal security or became a partner in the business without the

protection of limited liability and therefore at the hazard of his entire fortune. The gradually extended recognition by law of joint stock organization and limited liability removed this difficulty and opened the door to industrial investment by all who had savings or resources to spare.

Joint stock and limited liability not only increased immensely the total resources available for business expansion but also removed the limits to the size of the capitalist concern. Before this the entrepreneur's difficulty had lain in gathering together enough capital to equip and run a plant large enough to take full advantage of the economies of large scale production. But now he was able not only to do this but readily to expand the scale of business organization so as to bring a number of separate plants under a unified control. While the scale of business organization was still expanding under the inherent necessities of improving industrial technique, it was now able not only to reach these limits but also to pass beyond them. Indeed, as the larger concerns were often at an advantage both in raising fresh resources in the capital market and in getting credit from bankers and others, to some extent a premium was put on a scale of business organization considerably larger than that made necessary by the technique of production itself. In the early days of the trust movement there was a marked tendency for the increase in the size of the business unit to be dictated by financial rather than technological considerations, and this tendency was strongly manifested again in the troubled years after the World War in the gigantic mergers and concerns organized by Hugo Stinnes in Germany and in the unwieldy aggregations of businesses gathered under one control by Vickers or Lord Leverhulme in Great Britain.

There was also, however, a new technological tendency leading toward an expansion of the business unit on a scale very much larger than that even of the largest single plant. Under the earlier conditions of industrialism the plant was the essential technical unit and each plant could face its own technical problems independently of the rest. But the modern development of industrial technology is making the separate plants growingly interdependent in a variety of ways. In the first place, it is often essential, if the maximum economy in production is to be secured, to group together in very close relation and under unified control plants engaged in complementary industrial processes—in order,

for example, to save intermediate transport costs on bulky half finished goods or in order to utilize a waste product, such as blast furnace gas, in a subsequent manufacturing process. Secondly, it is often advantageous from the standpoint of economic production to reduce and simplify the varieties of a particular commodity placed on the market and for that purpose to secure at least as much unity of control as is necessary. Thirdly, the maximum economy is likely to be realized in many trades if each plant instead of producing a wide variety of goods in competition with the rest is in some degree specialized to the manufacture of a limited range of products and thus enabled to produce within this range upon a larger scale.

The first of these technological requirements leads to a growth of vertical combination; that is, the linking up of successive stages of production under a common control. The second leads to fairly loose horizontal agreements between firms at the same stage of manufacture but need not disturb the independence of each distinct business. The third leads to much closer horizontal integration, as it is found in such businesses as Imperial Chemical Industries, Ltd., or the English Steel Corporation, Ltd., or the Vereinigte Stahlwerke, A.-G., in Germany.

Karl Marx, whose analysis of the industrialism of the first half of the nineteenth century remains the most penetrating study of capitalist development, has often been arraigned as a false prophet because he predicted a growing concentration of capital and an increasing polarization of the two rival economic classes of capitalists and laborers. It is indeed the case that there is in modern industrialism no sign of the disappearance of the small employer and that the growth of joint stock organization has increased immensely the number of small part proprietors of capitalist business. But, on the other hand, the small employer has become increasingly an agent or subcontractor or a hanger on of large scale business; and the great body of shareholders in modern industry has literally no say at all in its conduct or control. There has been a tremendous concentration if not of the ownership at any rate of the control of capital. The old personal nexus between employer and worker has been snapped; and the real struggle for power today is to an ever increasing extent between the few controllers of large scale industry and finance and the organized force of the labor movement, with the middle classes and the small investors largely passive spectators of the

conflict. Even the growing body of industrial technicians, who should, one would suppose, occupy a key position in the modern world, have been able to assert themselves but little as an independent force. They have been in the main merely the executive servants of large scale capitalism, although in many cases their personal sympathies might range them rather on the side of labor.

It has been pointed out how industrialism in its first phase concerned itself mainly with the sale of cheap consumers' goods in the markets of the less developed countries and how in its second phase it supplemented this form of trade with the sale of capital goods fostered by the lending of capital and credit overseas. The second of these processes like the first cannot be expanded indefinitely without check. The first fails when it reaches the limits of the power of the less developed countries to offer more goods in exchange until their own productive resources have been more fully developed. This check leads on to the second phase; and this in turn fails when the burden of external debts upon the less developed countries becomes so large as to check further loans. Moreover as more and more countries pass under industrialism their rivalry in selling goods and lending capital to the less developed areas fills up the available markets more swiftly. The advanced countries find growing difficulty in selling their goods and lending their capital overseas on favorable terms. They scramble for openings and concessions; and, as Marx foresaw, international rivalries are intensified and cries of "overproduction" raised.

All this time the technological revolution knows no pause. It is always impelling industrialists to produce on a larger and larger scale and to create plants, based on heavier and heavier capital expenditure, which can be operated at a profit over and above the interest charges involved in their construction only if they are able to work full time and to find buyers constantly for their full output. Post-war Germany, for example, when it rationalized many of its industries with borrowed American capital, created a productive machine capable of producing very cheaply while it was fully employed, but only at high unit cost if the volume of output had to be cut down through a failure of markets. The same conditions apply to many types of business in the United States and Great Britain and in every advanced industrial country.

It is therefore plain that the technical conditions of modern industry imperatively demand

from the world of today an increase and a stabilization of consuming power. In default of this many of the greatest technical improvements are apt to mean not low costs but high because of the heavy expense of the capital equipment on which interest has to be paid. These high costs serve further to restrict demand both because they result in high prices, often artificially maintained, and because they throw potential consumers out of employment and so cut down their purchasing power.

But the increase of consuming power up to the expanding limits of productive capacity is a matter that industrialism under present conditions finds very hard to arrange. Herein lies the chief importance for the world of the gigantic experiment in socialist industrialism that is now proceeding in Soviet Russia. The Russians have set themselves not only to bring their industries up to the very last point of modern technological development—largely with the aid of American engineers—but also to industrialize in their vast country with its millions of peasant proprietors the technique of agricultural production. The socialized factories of Russia are of far less potential significance for the future of the world than its socialized farms.

But the importance of the Russian experiment does not lie mainly in the mere fact that the Russians are forcing on industrialization at a hitherto unprecedented pace but rather in the fact that they are doing this under conditions which insure an outlet in consumption for everything that they are able to produce. With the entire control of production and distribution centralized those in control are able to order what things shall be produced and in what relative quantities and also to distribute enough purchasing power among consumers to insure a sale for all that can be produced. All this of course can be done only within certain margins of error and subject to the export of enough goods to pay for what must be imported. But with the export trade in the hands of the state exports are not restricted to those that can be sold at a money profit. Foreign trade is in essence barter, and the state can put on imports prices calculated to represent the value of the exports needed to pay for them. Under these conditions Russia appears to be immune from the fears of overproduction or underconsumption which beset the rest of the industrial world. To whatever other objections its economic system may be open, it seems to have solved the problem of balancing production and consumption and thus

have set itself free to make the fullest use of every technical improvement in the arts of production.

This example of Russia raises a fundamental issue. How far are industrialism and capitalism the same thing viewed from two different aspects? Or how far are they two different and separate things connected only at a particular stage of the world's evolution? Historically the connection is close, but they can by no means be identified. For, as has been pointed out, capitalism existed long before industrialism and took at first a mercantile rather than an industrial form. It is arguable that as capitalism preceded industrialism and was modified by its coming so industrialism is destined to outlive capitalism, taking on a new shape, as in Russia, until socialist control.

For manifestly socialism, the child of industrialism, will not speedily take up arms against its parent. Industrialism bred socialism because it required the concentration of the workers into factories, their subjection to a common discipline of monotonous labor and an opposition between their demand for higher wages and the demand of the owners of the instruments of production for interest and profits. But socialism is not hostile to industrialism; basing itself on the demand for a higher standard of life for all, it therefore cannot afford to dispense with the fullest possible use of every technical device which will serve to increase production and lighten the burden of labor. It is true that the workers today may sometimes oppose the introduction of labor saving devices or other instruments of higher production through fear of unemployment or out of hostility to the capitalist controllers of industry. But if under a socialist system they get the instruments of production into their own hands, as they have done in Russia, they are bound to be on the side of changes designed to increase output or to lighten labor. Possibly at a later stage of the world's history, when the problem of producing enough to afford to all a satisfactory standard of material living has been fully solved, the mass of the people may declare against industrialism and express in deeds its preference for some other system; but assuredly that time is not yet. The advent of socialism would intensify and not retard the progress of industrialization.

This remains true despite the common indictment of industrialism that it condemns the great mass of the workers to a life of dull, monotonous and even irksome toil. It is easy to contrast the

skilled, varied and interesting labor of the handicraftsman with the deadening monotony of purely repetitive machine minding. But before industrialism arose what part of the whole population consisted of skilled handicraftsmen? Was it ever as large proportionately as the number of persons, including those in supervisory and professional work, to whom the modern economic system affords interesting and colorful employment? If the modern machine minder is to be contrasted with the guildsman of the Middle Ages, he should be contrasted with the mediaeval peasant as well. And if one is to stress the effects of machinery in destroying craftsmanship, it should not be forgotten what effects it has had—and the far greater effects it might have under proper control—in eliminating hard, disagreeable, unskilled and brutalizing labor.

The modern world cannot yet afford to restrict its use of machinery, both because there is much drudgery still to be eliminated and because the growth of working class power means an ever more insistent demand for a high and rising standard of life. If therefore capitalism gives place to socialism, the first phase of socialism will be more intensely industrialist than capitalism has ever been, because for the first time the whole community will be pulling together toward higher production over the whole field of industry and agriculture as well as in the management of domestic affairs to remove the burden of the drudgery of housekeeping now laid on half the human race.

It does not follow that industrialism need in its later phases preserve certain of the features most prominently associated with it up to the present time. Urbanization is still proceeding unchecked in the industrial countries, but its causes are now social quite as much as economic. The development of cheap road transport and of widely diffused electrical power is removing the technological reasons for close urban concentration of industry and preparing the way for a rediffusion which will enable it to be carried on under far healthier conditions. Little advantage has yet been taken of these opportunities, because no less essential to business than accessible power and cheap transport is an available supply of labor with sufficient housing and kindred accommodation. The business that wants to set up in the country has to attract its labor and often to house it and help provide it with the amenities of life. It cannot readily take on fresh workers to meet a rush or discharge workers when times are bad for fear of losing them

altogether. Accordingly only businesses catering for a stable demand are able to move out of the towns, and even such businesses are often deterred by the difficulties and initial capital costs.

Nor is this the only factor. Urban life has for the worker many attractions: its cheap amusements, varied society, the hurry and bustle of life and a sense of nearness to the center of things. It increases his freedom to change his job and his independence of his employer, whose eye cannot always be on him out of working hours. Men and women leave the country for the town from preference as well as from necessity, and business tends to stay near the sources of labor supply.

But here again a socialist system might make a great difference. For with the power of coordinated planning of industry in its hands it would have also the power of town and regional planning. It would be able, as the Russians are endeavoring, to create new small towns in the country areas and to equip them with the means of a varied and satisfying life, as only a few capitalists here and there have tried to do with garden villages and the like. Even so the socialist state would not succeed in decentralizing and de-urbanizing industry if the preference of the great mass of men was for living close together in great towns; but at least the other obstacles in the way of decentralization could be removed.

If under a socialist system industrialism should be intensified in order to provide a higher standard of life, there would nevertheless arise also a keener demand for leisure. The necessity of reconciling these two demands would only increase the pressure to make the most productive use of labor, to push rationalization to the furthest possible point and to eliminate all preventable waste of human energy. Hours of labor would doubtless be reduced; but the tendency would be to put more labor into each hour and then to aim at reducing the burden of this labor by increased mechanization of processes. If mechanization were applied with the conscious object of making labor less hard and intense as well as more productive, a great deal that is barely attempted as yet could be readily accomplished. The demands for more leisure and for more production do limit each other in some degree, but they are by no means incompatible.

Industrialism then does not connote capitalism, although it is historically connected with it. The essence of industrialism lies in certain technical forms of productive activity which are capable of being directed to various economic

ends and by radically different forms of economic organization. It may be, as Marx insisted, that capitalism has played an indispensable historic role in the development of industrialism, because only under the control of the autocratic individual entrepreneur could the new technical forces have found free play. Certainly it needed a strong directing authority to break up and replace the mercantile capitalism of the pre-industrialist era, to destroy the domestic system of small scale production and concentrate the workers in factories and towns, to accumulate capital at the expense of the immediate standard of living and to force upon the state an attitude toward industry consistent with the free growth of the new powers of production. Certainly the state itself, based on the aristocratic power of the landed classes, was at the time of the technical revolution quite unfitted to assume this directing role; and certainly the working class was equally unfitted, for it learned cohesion and became a force only as a result of its experience of concentration and discipline under the new industrial system. Capitalism was therefore for the countries that led the way into industrialism an indispensable stage; but it does not follow that industrialism once created depends on the survival of capitalism for its effective operation.

Indeed, to use again a Marxian phrase, there are signs today that capitalism has become a fetter upon the limbs of the industrial giant, holding back industrial development and checking the increase of production for fear of glutting the market. For the capitalist system of productive organization is based essentially on the incentive of private profit. The capitalist entrepreneur will not and cannot go on producing goods unless he can make a profit by their sale. His market is therefore limited not by the needs of the consumers but by their willingness and ability to pay him a remunerative price. As the prices he can get tend to fall as the supply of goods on the market is increased, the entrepreneur is disposed to retaliate by restricting production in order to keep them up to a remunerative level. But this reacts on his costs, which tend to decrease with larger and to increase with smaller output. Everywhere in the world today frantic efforts are being made to hold stocks of goods off the market, to buy up "redundant" factories in order to close them down and to maintain prices by valorization schemes at the cost of limiting demand. These are surely signs of something amiss with the capitalist world.

Some say that all would be well if capitalists

would but abandon their attempts to control the market and go back to competition and *laissez faire*. But there is no chance of their doing this, because so many of the factors of production that they have to use are now under external control. The state limits their authority by legislation, and trade unions are too strong both economically and politically to allow wages to be governed by the mere higgling of the market. Moreover, even if all these obstacles could be removed, where could world capitalism hope to sell the vast mass of goods industrialism is capable of producing unless it were prepared to let wages rise to a point fully corresponding to the growth of productive capacity? And that would ruin the capitalists of any one country unless that country were isolated from the rest of the world or unless all other leading countries did the same.

A return to *laissez faire* is impossible. The concentration of capital needed for the full exploitation of modern productive resources is too great to be left uncontrolled by the state; for those who have this concentrated capital in their hands will assuredly control the state unless it controls them. The attempts of capitalist combines to control production and prices are apt to defeat themselves, creating artificial scarcity, depression and unemployment in place of the plenty which man's technical command over nature is making possible. Is not the truth then that partial controls set up by groups of entrepreneurs for the maintenance of profits will have to be gathered up into a wider unified control of industry based on maximum production balanced by an equivalent emission of consuming power? There is nothing in this idea inconsistent with the development of industrialism. On the contrary, it seems that industrialism has now reached a stage at which its fuller development requires above all else coherent planning and unified control from the standpoint of consumption as well as of productive technique.

G. D. H. COLE

*See:* INDUSTRIAL REVOLUTION; ORGANIZATION, ECONOMIC; MACHINES AND TOOLS; TECHNOLOGY; FACTORY SYSTEM; LABOR; POWER, INDUSTRIAL; LARGE SCALE PRODUCTION; MARKETING; CAPITALISM; CORPORATION; COMBINATIONS, INDUSTRIAL; RATIONALIZATION; LAISSEZ FAIRE, GOVERNMENT REGULATION OF INDUSTRY; SOCIALISM; GOSPLAN; LABOR MOVEMENT; FOREIGN INVESTMENT; IMPERIALISM; URBANIZATION; REGIONAL PLANNING; LEISURE.

INFANT MORTALITY. *See* CHILD, section on CHILD MORTALITY.

INFANTICIDE is the murder of a newborn child committed by the parents or with their consent—a practise that stands apart both as to its origin and its associations from the killing of another man's child, which is simple murder. In some cultures parents are allowed to decide whether the newborn child shall be reared; if their decision is positive they will not thereafter under normal circumstances kill it. Older children are sometimes killed in times of famine—such cases have been known in Europe during sieges—but far from being customary these acts have been regarded as a breach of the moral law. Likewise if a mother, like Medea, kills her children as an act of spite against her husband, her deed is regarded as a crime and is remembered with horror.

Judging from its wide distribution, infanticide is probably extremely ancient. Destruction of human progeny is universal whether in the form of infanticide, abortion or contraceptive measures. Infanticide is the most primitive, since prenatal destruction involves anatomical and physiological knowledge. Even with this knowledge abortion is hazardous and consequently has never been as prevalent as infanticide, except where the latter is treated as murder.

The primary cause of infanticide is the difficulty of obtaining sufficient food, whether because the population has reached a saturation point or because of some temporary shortage. Among peoples such as the Africans and South Sea islanders, who suckle their children for as long as two years, a child born before the preceding child is weaned is sometimes killed. In communities such as those of the Australian aborigines, where women are indispensable for the food supply, no discrimination in infanticide is made between the sexes. In Rome, Greece, Arabia, India and China women of the upper classes, relieved by the males of the harder tasks both as an effort to keep them young and as a sign of rank, became an economic burden; and consequently infanticide fell mainly on the females. The necessity of finding a dowry for daughters contributed to a selection of female children for infanticide in China and India. Ancestor cults of Greece, Rome, India and China, which could be transmitted only through the males, also resulted in the destruction of girl infants. When a sorcerer or astrologer was consulted before deciding the fate of the infant, it was usually killed if the omens were interpreted as indicating that it would bring ill luck or calamity—a motive for infanticide familiar in

myths, such as that of Oedipus. The Roman Twelve Tables forbade the rearing of deformed children; in Sparta the newborn child was submitted to the elders, who exposed deformed infants to death. Athens did not enforce such infanticide, but Plato and Aristotle advocated the practise. In ancient Greece exposure often proceeded from affection for the previous children, from a desire to procure for them a standard of living which numbers would have made impossible. Illegitimate birth, which has been a common cause of infanticide, has remained practically the only cause in modern Europe, where infanticide has declined with the spread of contraceptives.

The decision as to whether to rear or kill a child is usually made at birth, probably because the parents become attached to the child if it is allowed to live for some time. In some countries there is a ritual reason: as long as the child has not gone through some sacrament it is not accounted a full human being or a member of the tribe. In Athens the decision was made prior to the *amphidromia*, a ceremony at which the child was carried round the hearth and so associated with the cult of the ancestors. The Frisian father could destroy the child only before the child had taken food and by this act had entered into communion.

The usual method of infanticide is by suffocation, by choking or by drowning; the infant's blood is rarely shed. The child may be exposed to starve, to die of cold or to be eaten by dogs—sometimes for the purpose of insuring death but more frequently in order to give it every chance of being picked up and reared by a stranger. Foundling hospitals have been established in China and in modern Europe to provide for infants so exposed. Conflict between parental affection and necessity also betrays itself in the rationalizations offered for the practise, such as the one found among the Chinese that female children by being killed are given a chance to be reborn as males.

In China edicts have frequently been issued against infanticide. In Europe the church in 305 decreed excommunication for life as the punishment for women guilty of the double crime of adultery and consequent infanticide; this sentence was reduced in 314 to ten years, in 524 to seven. The Council of Toledo in 589 directed clerics and civil judges to unite in their efforts to prevent infanticide due to poverty, which proves that the Theodosian code, which prescribed death, had remained ineffective. Infan-

infanticide is condemned in the Koran (xvii: 38). Modern English and Scottish laws treat infanticide as murder—English law defines infanticide as the killing of the child after the entire body is brought from the womb alive; Scottish law from the time the child has breathed, whether or not it is completely out of the womb. The crown has usually exercised its right of mercy when defendants have been found guilty of this charge. French law also treats infanticide as murder; in practise juries find extenuating circumstances and acquittals are common. The penalty for infanticide in the German code is from three years' penal servitude to death. The Italian code reduces the penalty from between eighteen and twenty years to between three and twelve if the child is killed before being entered in the civil register, not more than five days after birth.

Child sacrifice is distinct from infanticide, for it is not a family arrangement but a public function usually ordered by persons other than the parents; it bears equally on males and females, particularly on first born, instead of last born; it knows no age limit; and rather than being performed for the purpose of keeping down numbers it is often resorted to in order to insure further progeny.

A. M. HOCART

See: ABORTION; BIRTH CONTROL; POPULATION; ILLEGITIMACY.

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INFECTIOUS DISEASES, CONTROL OF.

See COMMUNICABLE DISEASES, CONTROL OF.

INFLATION AND DEFLATION. Although employed earlier, the terms inflation and deflation did not come into general use until the World War. Only with the severe currency disturbances initiated at that time was anything approaching a technical sense applied to them; and even now the meaning which an economist associates with them is apt to vary in accordance with his general views regarding the money-credit-price mechanism.

Some use the terms inflation and deflation in connection with expansions and contractions of currency only; others, with a better knowledge of money and banking phenomena, expand them to include primarily credit movements; still others limit their application to currency and credit disturbances connected with price movements more or less general and violent. In contrast, many associate inflation and deflation above all with the movements of foreign exchange rates and consequently are inclined to ridicule the idea of a gold inflation, however great the accompanying credit, currency and price expansions. Finally, there is in the United States a small group who insist on basing the definitions largely on the liquidity of banking assets, inflation increasing as liquidity declines.

Perhaps the most generally accepted definition of inflation is that it is the issue of too much money; deflation is commonly taken to mean the opposite of inflation—the issue of less than the right amount of money. The question is thus raised as to the standards or norms, the deviation of the circulating medium from which is considered to be either inflation or deflation. One group vaguely measures the extent of inflation or deflation by the deviation of the circulating medium from "the legitimate needs of trade." Sometimes inflation is defined equally vaguely as the multiplication of money in relation to goods, sometimes as the increase in the volume of purchasing power in relation to the total volume of transactions. A few refine slightly their definitions so as to make inflation or deflation mean an increase or decrease in the circulating medium in relation to "the legitimate needs of trade" at some given price level. Most of those using the above definitions are proponents of the quantity theory or of some modification of it; hence such deviations are expected to lead to or to support changes in the price level. Whether or not price changes largely supported by changes in the velocity of circulation would be considered as inflation or deflation is generally not clear.

Some writers go even further and make price change the sole criterion of inflation or deflation. Cassel, who has given perhaps the best although a far from exact statement of this position, maintains: "If no scarcity in commodities exists . . . the rise in prices is to be accounted for as a result of the more plentiful supply of currency—in other words as a result of inflation. The general level of prices, on this hypothesis, is a measure of the extent of inflation. If a scarcity of commodities sets in, . . . the rise in prices is thereby intensified. But even this further rise in prices may be regarded as a result of a too plentiful supply of currency and consequently of inflation. . . . In both cases the essential point of inflation is a too plentiful supply of currency. In the former case we estimate this excess only from the standard which prevailed before; in the latter case we also take into consideration the excess in the supply of currency which arises through the former standard being retained even after the supply of commodities has diminished" (p. 61-62).

Keynes too makes price change the criterion of inflation or deflation; but he distinguishes between two types, which affect the economic equilibrium quite differently. Changes in the price of output as a whole, which measure the extent of inflation or deflation, may be reflected in changes either in the cost of production per unit (or income per unit) or in profit per unit (profit being the difference between sales price and cost of production including the normal remuneration of entrepreneurs). A price change reflected in income inflation gives entrepreneurs no incentive to expand the scope of their operations, but a price change reflected in profit inflation leads them to attempt expansion and results in a tendency toward a boom. Thus a stable price level would not necessarily maintain business equilibrium. If as a result of marked improvements in technique and organization the cost of production per unit fell while prices were kept stable, profit would absorb the difference, at least temporarily, and business expansion might result. If, on the other hand, prices were kept stable in face of higher costs of production, entrepreneurs would suffer negative profits and business contraction might result.

An altogether different criterion of inflation is advanced by a small group of writers who tend to identify inflation with extension of bank credit on the basis of unliquid assets.

According to Laughlin, one of the leaders of this school, only price changes resulting from monetary factors are to be considered inflation or deflation, since price changes caused by a scarcity or abundance of goods are only the natural and desirable result of such a condition. Further no expansion of credit based on liquid goods can lead to a rise in prices, as the newly created credit is exactly counterbalanced by the goods on which it is based. It is only when credit is granted on assets which cannot be liquidated without loss to repay the loan at maturity that credit is depreciated in terms of goods and inflation exists. Robertson and others pointed out that this coining of even liquid goods into money may lead to rising prices as the resulting deposits circulate from hand to hand. It might be argued further that since the liquidity of assets is usually high in periods of rising prices and low in periods of falling prices, inflation of credit, as Laughlin uses the term, would be most conspicuous in a period of declining prices; inflation as generally understood is of course usually associated with rising prices.

The writers prefer to define inflation (none too exactly) as an increase in the general level of prices growing out of an increase in expenditures while goods available for purchase are not correspondingly increased in amount. Likewise deflation is defined as a decrease in the general level of prices growing out of a decrease in expenditures while goods available for purchase are not correspondingly decreased in amount. Unfortunately in the present state of knowledge the relative importance of different factors in price change cannot be ascertained. It cannot even be said that all price changes have the same significance; some may lead to economic disequilibrium while others may be necessary to maintain equilibrium. Keynes has attempted, although not yet entirely successfully, to distinguish these changes.

In the past, major instances of inflation seem always to have been associated with government finance. An increase in government expenditures even if unusually large does not of itself lead to inflation provided the government finances itself by taxation. Under such conditions the increased demand for goods and services on the part of the government is approximately counterbalanced by decreased means of purchase on the part of its citizens. A rise of prices is not, however, excluded: it is possible that citizens will secure additional credit to avoid too large a



reduction in their expenditures. Yet inflation initiated by governments with balanced budgets is rare. In a period of war, when military requirements necessitate huge and sudden increases in government expenditures, it has usually been found inexpedient on economic as well as on political grounds to raise more than a small portion of the newly needed revenues through taxation. In such cases resort may be had to loans from private investors or banks or even to the direct issue of government paper money.

If loans from private citizens are relied upon, the effect may or may not be inflationary, according to the conditions of the borrowing. If each individual who lends to the government curtails his own expenditures by an amount exactly equal to the sum lent, total expenditures will not thereby be increased. The chief result will be a redistribution of the demand for goods. Whether or not price indices change would depend upon the articles included in the index and the extent of individual price changes resulting from the redistribution of demand. In most instances, however, individuals do not decrease their expenditures by amounts equal to the sums lent to the government. The unwillingness suddenly to change spending habits, the need of expanding production to satisfy increased demand by the military, the possession of highly acceptable collateral in the form of government securities and the usual liberal discount policy at the banks lead government creditors to restore the funds at their disposal at least partially by borrowing from the banks on the basis of the purchased government securities. If these bank loans are not offset by decreased loans of other types, the result is a net addition to bank credit likely to be used to demand goods.

The World War finances of the United States government furnish an excellent example of this type of inflation. Individuals were encouraged to "borrow and buy" government securities. To the extent that banks loaned on these securities without reducing their other earning assets the effect was much the same as it would have been had they loaned the same amount directly to the government. Gold exports were forbidden except under special permit. Reserve requirements of member banks were lowered and all reserves were required to be held at the Federal Reserve Banks; thus most of the reserve money of the country was concentrated in the central banks and the basis of credit expansion was much enlarged. At the same time rediscount rates were

kept low and member banks were encouraged to borrow on government security collateral at a preferential rate of interest.

If a government decides to finance its operations either wholly or partially by an expansion of bank credit or by increased paper money issues or by both, the sums it must raise will depend partly on the volume of goods and services needed and partly on price movements. If the prices of the goods which it purchases move slightly or not at all, the government will be able to balance its budget with relatively smaller issues. If these prices rise in direct proportion to the increase in the circulating media, the new funds required to purchase the same physical volume of goods will increase correspondingly. If, however, as is frequently the case, prices increase faster than the circulating media, the treasury may find that every inflationary attempt to balance its budget tends to create a greater deficit.

Major instances of inflation show that although the movements of circulation and prices are in general in the same direction, wide fluctuations in one may occur with only retarded and disproportionate or even dissimilar changes in the other. Perhaps more surprising is the fact that during such inflations the movements of prices tend to be far more correlated with the movements of foreign exchange rates than with circulation. The relationship between prices, circulation and foreign exchanges may be illustrated by the history of the World War and post-war inflations in France and Germany.

Soon after the outbreak of the war the French government, unable to raise sufficient funds by taxation and private loans, was forced to make up the difference by borrowing from the Bank of France. Throughout the inflation period these loans increased almost continually and by large amounts as receipts from other sources became more and more inadequate. Commercial loans instead of falling off to balance the increase of treasury loans rose as the lag of production costs behind prices increased commercial profits. At the very beginning of the inflation the increase of circulation may conceivably have preceded the rise of prices, but soon thereafter prices began to rise earlier and faster; it was only in 1926 during the last stages of the inflation that circulation did not lag perceptibly. Although prices probably moved slightly ahead of foreign exchange rates from 1919 to 1923 and exchange rates slightly ahead of prices from 1923 to 1926 during much of the period they

moved approximately simultaneously, with a slight tendency for exchange to precede. The lag of circulation behind both prices and exchange rates led to an insistence on the part of the French that the increase in circulation did not cause the rise in prices but was itself caused by the price rise as the existing circulation became inadequate to meet the needs of government and industry. In fact the increase in government purchases led to increased business activity and to price rises and these in turn to currency expansion as fast as the government warrants were cashed into notes of the Bank of France.

The German war and post-war inflation paralleled in many respects that of France. Shortly after the outbreak of the war the Reichsbank was allowed to suspend specie payments and to substitute discounted treasury bills for commercial bills as non-cash cover for its notes. Although the government had borrowed large sums from the Reichsbank and the latter's notes had increased considerably, the extent of inflation at the end of the war was not greater than that in several other of the belligerent countries. In the post-war period, however, large reparations payments and other heavy expenses made impossible—politically if not economically—the balancing of the budget, thus necessitating heavy inflationary borrowing from the Reichsbank. Even more than in France the movements of prices seem to have preceded in time and exceeded in extent the movements of circulation. As a contributing factor to the price rise the velocity of circulation showed a great increase, especially in the period of most rapid inflation. Evidently people were attempting quickly to exchange their money for goods in order to escape further loss of purchasing power. Although as in France the correlation between their movements was high, during most of the period prices showed a noticeable lag behind foreign exchange rates. With this tendency of prices to follow exchange and to increase more rapidly than circulation the government was forced to borrow in progressively larger amounts in order to get needed supplies. From industry too came the insistence that there was a shortage of credit and money and that instead of causing the price rise the increased volume of notes was itself made necessary by previous price advances.

The fact that during inflations the rise of prices tends to exceed the increase in currency is directly connected with the increase in the velocities of circulation of all types of cur-

rency: people attempt to reduce to the minimum the amount of funds on hand in order to escape the loss due to depreciation. Another explanation suggested by the fairly steady lag of circulation behind prices is the fact that prices of goods purchased on credit or manufactured to order are recorded two or three months before currency is needed to close the transaction. In countries where deposit currency is used in all business transactions of any magnitude the lead of the general index of wholesale prices over the issue of banknotes and paper money for hand to hand circulation may correspond roughly to the lead of wholesale prices over retail prices and wages.

One explanation of the close relationship between prices and foreign exchange rates is offered by the purchasing power parity theory championed in recent years by Cassel. Since, according to him, a monetary unit as such, that is, apart from its value as a commodity, has no utility other than its power to command goods in exchange, the demand for currency of country A in exchange for currency of country B is simply an offer to exchange purchasing power in one of the countries for that in the other. Therefore the valuation of one currency in terms of the other will depend upon the relative purchasing power of the two currencies in their own countries. Following this line of reasoning Cassel contends that apart from slight fluctuations the exchange rate between the currencies of two countries will remain unaltered so long as no variations take place in the purchasing power of either currency and no obstacles are placed in the way of trade. Should inflation occur in country A and the purchasing power of its currency be consequently reduced, the value of currency A in country B will necessarily fall in like proportion. If at the same time currency B has undergone inflation, the valuation of currency A in terms of currency B will as a consequence rise in corresponding degree. Cassel arrives thus at the following rule: "When two currencies have undergone inflation, the normal rate of exchange will be equal to the old rate multiplied by the quotient of the degree of inflation in the one country and in the other" (p. 140). He recognized that underlying his rule is the assumption that the prices of articles for export move in the same degree as the general price index. If the prices of exports rise more than the general price index, the country's money will buy correspondingly less of the foreign currency; but if the prices of a country's

exports rise less than internal prices, its money will buy correspondingly more of the foreign currency.

This theory has been subjected to severe criticism on several points. Keynes states that it is only a truism to say that the relative value of two currencies can be derived by finding their relative purchasing power over goods entering into trade between the nations involved, but he would deny validity to the assertion that rates of exchange can be found by comparing comprehensive indices of internal purchasing power. The observed similarity between actual exchange rates and theoretical purchasing power parities arrived at by comparing wholesale price indices he would explain largely by the fact that those indices as at present constructed are dominated by articles enjoying an international market.

Nogaro points out that as goods purchased in international trade can often be produced at home only at prohibitive or very high costs, Cassel's contention that merchants will refuse to purchase a currency quoted above its purchasing power parity is too strict to be tenable. He prefers the older, less strict and in his opinion more nearly tenable theory that if foreign exchange rates rise faster than prices, exports will be encouraged and imports discouraged, thus tending to restore the balance of payments and to reduce the disparity between price and exchange movements. Further he denies the existence of a purchasing power parity, from which any deviation will set into operation influences tending to restore the norm. Internal prices are not fixed by factors independent of exchange rates. If foreign exchange rates rise faster than prices, the cost of imports in terms of home currency rises. At the same time the high price obtainable for bills of foreign exchange raises the price of exportable goods in the home market. Certain psychological effects may also ensue. Considering the rise in foreign exchange as evidence of probable future price increases, consumers may hasten to exchange their money for goods. Sellers instead of basing sales prices on actual cost or on cost of replacement may base them on prevailing or even expected future exchange rates—a practise common in Germany during the period of most rapid inflation. Thus a rise of exchange rates above the purchasing power parity resulting from exchange speculation or from any other factor in the balance of payments may serve to draw internal prices with it and thereby establish a new purchasing power parity. Nogaro also points out

that this tendency of internal prices to move with exchange rates prevents the automatic adjustment of the balance of payments which would result from the encouragement of exports and from the discouragement of imports and hence to that extent fails to stabilize exchange.

Of the evils of rapid inflation there can be little doubt. Although for some time the rise of selling prices above costs increases profits and stimulates production, when inflation becomes extremely rapid entrepreneurs often hesitate to enter into contracts drawn in money and production becomes deranged. Long term creditors find their claims virtually wiped out, and the amount of new capital offered for long term investment soon declines. The banks do a rushing business in extending short term loans despite the rise in interest rates. During progressive inflation, however, the rise of the market rate of interest compensates but slightly for the depreciation of the principal; business enterprises are thus not only largely relieved of their bonded indebtedness but are tendered a continuous subsidy by the banking system of the country. The victims of inflation are those whose money incomes do not rise as fast as prices; creditors, salaried workers and wage earners find their real incomes reduced as the monetary unit loses purchasing power.

The end of inflation is usually marked by credit stringency and numerous bankruptcies. The ensuing scramble for liquidity intensifies the liquidation of both business and banks, until in turn the volume of credit and prices are reduced far below their otherwise normal levels. Only by drastic measures, which are rarely applied except by accident, has the downward movement been speedily checked. With the decline of prices come decreased production and a shift in distribution. Recipients of fixed incomes, wage earners, salaried workers and creditors find that their money incomes have greater purchasing power than before. This gain may be more than balanced, however, by loss of employment and defaults in payments. Entrepreneurs and debtors, on the other hand, find their incomes greatly decreased and their obligations harder to pay.

While major inflations receive their impetus from treasury needs and are later fostered by business expansion, minor inflations commonly occur during the upswing of the business cycle. Although inflations characteristic of recurring periods of prosperity never attain the heights reached during inflations fostered by governments they follow a similar course. Some occur-

rence or group of occurrences leads to actual or prospective profits. Expansion of operations and of borrowing ensues, which gradually becomes more general and further increases profits. With new and increased loans made to profitable and expanding business a rise in prices is sure soon to follow. Inflation has thus made its appearance through normal business processes. As in the major cases, the end is frequently set by the limitation of credit either at home or abroad; liquidation and usually deflation ensue.

JAMES HARVEY ROGERS  
LESTER V. CHANDLER

See MONEY; COINAGE; PAPER MONEY; CURRENCY; BANKING; COMMERCIAL; FOREIGN EXCHANGE; WAR FINANCE; BUSINESS CYCLES; DEBT; STABILIZATION; BUSINESS; PRICE STABILIZATION; CENTRAL BANKING; MONETARY STABILIZATION.

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INGENIEROS, JOSÉ (1877-1925), Argentinian psychiatrist and sociologist. Ingenieros, who holds a commanding position in Latin American thought, elaborated the economic interpretation of history traditional in Argentina by ultimately explaining economic behavior in terms of biological processes. From this point of view he wrote on the living and working conditions of the proletariat and on the history and thought of Argentina. In his approach to the problems of psychology and philosophy he was

neopositivist. He condemned mediocrity but recognized the part played by the average man in preserving and transmitting the variations useful for the continuity of the social group. In criminology, which was his earliest sociological interest, he is best known for his classification of delinquents, which categorized criminals according to whether their delinquency was associated with the intellect, the feeling or the will. He was critical of the value of Spanish culture in South America, opposed Pan-Americanism as an instrument of imperialism and led a group which turned its intellectual sympathies from France to Soviet Russia. The Unión Latino-Americana, established in 1925, was a result of a campaign which he initiated. In addition to his many stimulating and widely read books in all fields of the social sciences he founded and edited the *Archivos de psiquiatría y criminología, medicina legal* (12 vols., Buenos Aires 1902-13) and the *Revista de filosofía* (1915- ), which is still published.

C. BERNALDO DE QUIRÓS

Important works: *Simulación de la locura ante la criminología* (Buenos Aires 1903, 8th ed. 1918); *La simulación en la lucha por la vida* (Buenos Aires 1903, 12th ed. 1920); *La criminología* (Buenos Aires 1911, 7th ed. 1919); *El determinismo económico en la evolución americana* (Buenos Aires 1901; 7th ed. with title *Sociología argentina*, 1918); *Principios de psicología biológica* (Buenos Aires 1911); *El hombre mediocre* (Madrid 1913, 3rd ed. Buenos Aires 1917); *Hacia una moral sin dogmas* (Buenos Aires 1917, 2nd ed. 1919); *Ciencia y filosofía* (Madrid 1917); *Proposiciones relativas al porvenir de la filosofía* (Buenos Aires 1918); *La evolución de las ideas argentinas*, 2 vols. (Buenos Aires 1918-20); *Los tiempos nuevos* (Madrid 1921, 2nd ed. Buenos Aires 1925); *Las fuerzas morales* (Buenos Aires 1925, 2nd ed. 1926).

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INGERSOLL, ROBERT GREEN (1833-99), American lawyer and lecturer on agnosticism. Born at Dresden, New York, the son of a Congregational minister, Ingersoll spent his boyhood in small town parsonages in his native state and in Ohio and Illinois. He was admitted to the bar in 1854, entered Illinois local politics as a Democrat and saw brief service in the Civil War as

colonel of the Eleventh Illinois Cavalry (Volunteers). In 1863, having resigned from the army following his capture and parole, Ingersoll resumed the practise of law and joined the Republican party. He immediately attained fame as a lawyer and was especially noted for his ability in rapidly assimilating a brief and for his skill in gracious but devastating examination of witnesses. As leading counsel for the defendants in the notorious "Star Route" trials he performed one of the outstanding legal feats of the second half of the nineteenth century by securing their acquittal in 1883.

For a whole generation because of his great oratorical gifts and his enthusiastic acceptance of the tenets of Republicanism Ingersoll was one of the chief adornments of his party. At the nominating convention of 1876 his designation of Blaine as a "plumed knight" almost saved the day for his candidate. He campaigned for Garfield. His violent attacks on the leveling doctrines of Bryan in 1896, his defense of the war with Spain and his acceptance of McKinley's expansionist program put the stamp of approval, for many, on the newly developed capitalistic-imperialistic policies of the Republican party. Ingersoll might well have attained high public office had it not been for his radical religious beliefs; his conservative views on political and economic questions made his social acceptability assured.

It was as a foe of religious orthodoxy that Ingersoll was best known. For thirty years, using the lecture platform largely as his medium and talking before great assemblages, he expounded with great force and eloquence a simple agnostic creed the chief articles of which were a protest against the doctrine of eternal punishment, a denial of the certainty of the existence of God and a rejection of the inspired character of the Old Testament. These orations were singularly effective and succeeded in shaking the faith of thousands. Not an original scholar, he had an alert and absorptive mind and was familiar with the popular scientific writings of his day, particularly those of Huxley, and with the higher Biblical criticism. He selected as his own guiding principles those of "observation, reason and experience." On the other hand, he did not concern himself with the part played by organized religion in the support of dominant economic and political groups. Among Ingersoll's more notable lectures were "Some Mistakes of Moses," "The Gods," "The Ghosts," "Superstition," "The Truth," "Some Reasons Why,"

"The Foundations of Faith," "What Is Religion?" "The Liberty of Man, Woman and Child."

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INGRAM, JOHN KELLS (1823-1907), Irish scholar and sociologist. For the major part of his life Ingram was connected with Trinity College, Dublin, where he was successively scholar, fellow, professor of oratory and English literature, professor of Greek, librarian and senior fellow. He wrote on mathematical, statistical, philological and literary subjects and also published a volume of poems. But he is chiefly important as an economist and sociologist. After studying the writings of Comte he became at the age of twenty-eight a convinced positivist. His main works in this field are devoted to an exposition of positivist views on ethics and religion in their relation to society. They include *Outlines of the History of Religion* (London 1900), *Human Nature and Morals According to Auguste Comte* (London 1901), *Practical Morals* (London 1904), *The Final Transition* (London 1905) as well as *Passages from the Letters of Auguste Comte* (London 1901).

Ingram's conception of economics was largely determined by his positivist sympathies. He considered orthodox political economy—as represented, for example, by Cairnes—to be at fault in that it tried to study wealth in isolation from other social phenomena, was abstract and inhumane, deductive and unhistorical. In his view economics should be treated as merely a part of "sociology"—the empirical study of the evolution of social life and institutions in general. In opposition to the German historical school he held that such a study need not be confined to description; it could formulate laws, not indeed of static equilibrium but of changing development. This thesis he first enunciated in his address to the British Association in 1878, published the same year as *Present Position and Prospects of Political Economy* (London 1878). It is implied throughout his *History of Political Economy* (Edinburgh 1888, republished from

his article in the ninth edition of the *Encyclopædia Britannica*, vol. xix, 1885; new ed. with supplementary chapter by W. A. Scott and introduction by Richard T. Ely, London 1915), which constituted the first comprehensive and authoritative history of economic doctrine in English. These two works, although exaggerating the interdependence of the social sciences, were nevertheless influential along with the writings of Ingram's fellow countryman Cliffe Leslie in broadening the basis of economic studies throughout the world. In the United States they provided one of the chief sources of inspiration for Richard T. Ely and the "new school of economics." Ingram also wrote a *History of Slavery and Serfdom* (London 1895).

LINDLEY M. FRASER

*Works:* A complete bibliography of Ingram's writings has been published by T. W. Lyster (Dublin 1909).

*Consult:* Falkner, C. L., "A Memoir of the Late John Kells Ingram" in *Statistical and Social Inquiry Society of Ireland, Journal*, vol. xii (1906-12) 105-24; Keynes, J. N., *Scope and Method of Political Economy* (4th ed. London 1917).

INHERITANCE is the entry of living persons into the possession of dead persons' property and exists in some form wherever the institution of private property is recognized as the basis of the social and economic system. But the actual forms of inheritance and the laws and customs governing it differ very greatly from country to country and from time to time. There is no "natural" law or principle of inheritance, which is essentially a changing thing, based on the changing forms of economic and social organization; for the special laws and customs governing inheritance are always and everywhere part and parcel of the general structure of property relationships. Changed ways of owning and using property will always bring with them in the long run alterations in the laws and practices relating to the inheritance of wealth.

Unless there is private property, owned or possessed by individuals, the question of inheritance hardly arises. For whereas an individual dies and his property, if he has any, has to be disposed of in one way or another, a group, such as a clan or tribe or family, does not die. Members die and are replaced by new members in the common enjoyment of the property of the group. The property itself, however, never changes hands or needs to be disposed of. Under such conditions there is no inheritance, in the sense in which the word is used in this article, because the group is conceived of as the

repository of the right of possession. This is one reason why inheritance plays a very small part in the life or laws of most primitive societies. The group holds in common and is tenacious of its rights. The individual does not hold but only shares in the use; and accordingly, when he dies, there is nothing for anyone else to inherit.

Even when there is in primitive societies individual property of a sort it can seldom be inherited. For where most property is group property, what is recognized as a man's own is usually limited to things so personal to himself that it would appear impious to hand them over to another at his death. His weapons, his simple tools and utensils are thought of as extensions of his own personality, as in modern times Hegel and other philosophers have thought of property over a far wider field. As part of his personality they are often to be burned or buried with him; and this tendency is the stronger because it is commonly believed that the dead will have need of them in another world. The deceased must take his means of creation and expression of his personality with him to the other world; and consequently no one else may inherit them in this. The very idea of inheritance in any shape or form is slow to develop in societies where private property scarcely exists.

But as fast as private property develops, and especially as soon as it touches the means of production beyond mere tools of a craftsman's trade, inheritance comes with it. Indeed property in the sense of ownership is not essential; it is enough that there should be private possession and use, for rights over things can be passed from the dead to the living as well as things themselves. There is a right to succeed to a tenancy as well as to the ownership of a farm; and many forms of inheritance are in effect successions to rights and sometimes to duties rather than to things. This is obviously true of hereditary titles and offices as well as of many forms of feudal and similar tenure. Indeed in one sense all inheritance is of rights or duties; and these rights and duties are only sometimes embodied in material things.

The inheritance laws and customs of societies are apt to be most complicated where they are still based, in part at least, on a lingering sense of group possession or ownership. Complete freedom to bequeath property or to give it away during a man's lifetime can develop only under social and economic conditions based on highly individualistic notions about property. A thing must be absolutely a man's own in a most indi-

vidual sense for him to have a full right to give or bequeath it to whom he will. Indeed only among English speaking peoples, where in general only dower or similar rights created by statute limit free disposal by the testator, does full freedom of bequest exist today or has it ever existed; and even in their case it is fairly modern, a product of an increasingly individualistic economic system. It does not exist in Scotland even now or wholly in the United States; and there is no continental country in Europe that even approaches it. Everywhere except in England and in countries which have borrowed their legal institutions largely from England property still retains something of a group character. It is not purely personal, and it has functions apart from the purposes of its possessor for the time.

This is most clearly seen in such institutions as the legitim, the legally enforceable claim of widows and children to at least a part of a dead husband's or father's estate. The legitim takes many different forms but it exists in some form and degree in the great majority of countries, including South American and important European states, exclusive of Russia, and Louisiana in the United States. Nor is it reasonable to regard it simply as a restriction on the right of bequest; for that would imply free disposal of property by will or gift to be the natural and obvious thing. It is so far from being natural or obvious, however, that it has never occurred to the great majority of mankind that it ought to be the main way of disposing of property. On the contrary, in all peasant countries there is still a strong tendency to think of real property at least as belonging to the family rather than the individual. It is the family's means of life, from which no member can be shut out except for positive misconduct. Property is no longer common to the family, as it used to be to the clan or tribe; but neither is it purely the personal property of the head of the family.

Naturally the notion of a group right or claim clings most tenaciously to forms of property which the group actually uses as instruments of production. The more property ceases to have this character and takes the form of money or shares in undertakings which are not purely family affairs, the less the group feeling remains attached to it. The family's claim to money or to shares in a joint stock concern is far less deeply rooted in tradition and seems far less compelling than its claim upon the family estate as a means of life. Townsmen in India often exist on pitances derived from the family land, which is

regarded as charged with the maintenance of all the members. Even where property takes a money form or that of paper claims on the earnings of businesses outside the family's control, the notion of the estate as a group possession usually dies hard. It is not dead even in England or the United States; there it asserts itself not only in the laws governing intestacy but also even more powerfully in social custom, influencing the wills men actually make, even when they have full legal freedom to make what wills they like.

Modern forms of economic organization are very powerful solvents of the group notion of property, for they tend to make the claims to income arising out of property divisible without the need for dividing the property itself. The chief argument against the legitim in most of its forms is that it tends to a more and more minute subdivision of property. Where landed property is the chief form of wealth, this may have very serious results not only in the breaking up of large estates but also in the subdivision of peasant holdings to a point which makes agricultural improvements impossible and reduces holdings to a size too small to admit of a tolerable standard of life. The institution of primogeniture has been upheld mainly on the ground that it keeps estates and agricultural holdings together, thereby making possible their more efficient development for the production of wealth. When, however, property comes\* to consist largely of stocks and shares, the arguments against division have far less force. In public companies and corporations the parceling out of the shares among a larger number of holders has little effect upon management; even in the case of family businesses charges can be made on the net earnings for different members of the family, and where such a business is turned, as now often occurs, into a private company, actual shares can be issued and the business still carried on without change of policy. It can be urged that the setting up of charges on the business or the diffusion of the ownership of shares makes the accumulation of capital out of reserved profits harder than it would be if the whole business were inherited by a single owner. But this is only one aspect of the wider argument that great inequalities of wealth and income are necessary for the adequate accumulation of capital in modern societies. In general there is no doubt that the institution of shareholding in joint stock concerns as the outstanding form of property ownership has made far

easier and less open to economic objection the diffusion of estates at their owners' deaths.

This diffusion tends to a more individualistic conception of property rights; for, save in the special case of businesses which retain their family character, the divided property loses all unity and becomes simply part of the separate estates of the various inheritors. It may still be regarded as the duty of the richer members of the family to help maintain the poorer; but this becomes a purely social duty, unconnected with the conception of a family estate charged with the maintenance of all the members. Only in the case of landed estates does this notion retain any force in developed industrial societies and even there it has been greatly undermined. In peasant societies, on the other hand, the idea of the family holding as charged with the family maintenance still retains great force. Often most of the family are driven or impelled to go away and work elsewhere, as factory hands or laborers or in a higher stratum of society as doctors, civil servants or lawyers. But even when they have left the family property, the notion of its responsibility for helping them in adversity survives with almost undiminished force.

In modern industrialized societies, where the conception of property has become highly individual and the family survives as a social rather than an economic institution, the tendency has been to leave inheritance as free as possible from regulation by the state and therefore to extend continuously the right of unfettered bequest. The state has still to postulate what is to happen in cases of intestacy, but with the increase of the will making habit, fostered both by the growth of education and by the enlarged freedom of bequest, intestacy becomes of less practical importance. Most people with anything considerable to leave do dispose of their property by will, and in most English speaking countries they are left a very wide discretion—practically complete freedom—to carry out their wishes.

In the early nineteenth century, in England at any rate, freedom of bequest came to be widely regarded as an integral part of *laissez faire*. The classical economists, especially McCulloch, argued strongly against the legitim and in favor of primogeniture as a social institution, on the double ground that division of property operated against its efficient exploitation and that the disinheriting of younger children gave them the maximum incentive to make their own way in the world. A secure competence they regarded as disastrous both for society and for the indi-

vidual who enjoyed it; and they urged that men would be spurred on to make the best use of their powers only by need and by emulation of the rich. Inequality was defended as a means to the accumulation of capital and primogeniture favored on the ground that although it might be bad for the heir by making him lazy it was good for the younger children and the community. According to McCulloch it was a positive privilege to be disinherited; but it never entered his head that the best thing would be to disinherit everybody.

Although primogeniture was favored, there was no desire to enforce it by law; for freedom of disposition by will was regarded as a necessary incentive to the accumulation of capital and it was intended that the father should be able to leave his property away from his children, thus having the whip hand over them while he lived and the authority to induce in them virtuous and industrious habits. The object was to give men the greatest possible incentive not only to make but also to save money; and this would be best secured by putting what they made and saved absolutely at their free disposal. Despite Jeremy Bentham's pleas for limitation of inheritance the nineteenth century doctrine of property and inheritance developed in England on purely individual lines in strict keeping with the philosophy of *laissez faire*. In this field as in many others it was left for John Stuart Mill to go back on the classical tradition and to propose in addition to some restrictions on the right of bequest a severe limitation of the sum which any one individual would be allowed to inherit from any source. Mill is hesitant, for he is impressed with the undesirability of doing anything to check capital accumulation. But he also dislikes and desires to reduce inequality and his wish is at several points the forerunner of modern doctrines dealing with taxes on inheritance.

Before Mill the question of inheritance was considered, except by the socialists, almost solely in relation to the accumulation of capital and the efficient use of productive resources and hardly at all as a problem of social justice. In Mill the two points of view are in conflict; and from his time the question has always to be considered from both standpoints. On the one hand, inheritance and freedom of bequest are defended as necessary incentives to saving and as means to the more effective use of capital; for, given freedom of bequest, it is held that men will tend to leave their capital in such ways as to promote its effective use. On the other hand, in-



heritance is attacked as one of the greatest sources of social and economic inequality and proposals are made to limit or even to abolish it in order to secure a better distribution of income.

Abolition of inheritance, however, can hardly be urged as a self-contained and sufficient reform, for if property is to lapse to the state at its owner's death, and that is what abolition involves, the state will have either to make use of it for production under collective control or to let it out to the individuals who seem best qualified to use it. The former is the socialist solution; the latter has been urged by various small groups from time to time and is urged today by the followers of Rudolf Steiner. In either case the abolition of inheritance involves a radical change in the economic as well as the social system and especially new methods both of accumulating and of using capital. It would also involve, at any rate in the first generation, some restrictions on gifts *inter vivos*, such as a real enforcement of the legitimo also demands; but whether such restrictions would remain necessary after the first generation would depend on the opportunities for fresh capital accumulation still left to the individual.

There can be no doubt that under any socialist system, even if it fell far short of communist thoroughness, the right of inheritance would be in practise very severely restricted, for with the instruments of production in the hands of the state the chief means and therewith also the need of private accumulation would be gone. The accumulation of capital would clearly become a collective function of society. Incomes would be distributed after subtracting the amounts needed for the provision of new capital equipment; and they would be meant for spending, not for saving. Inheritance would thus be restricted at most to things of use and could not include instruments of production, except during a period of transition. Probably even within these limits it would be further restricted by law, at any rate as long as any considerable inequalities of income existed; for with the development of social services the argument that a man needs to provide for his children would be progressively undermined. Probably the bequest of personal possessions up to a limited amount would be allowed; but inheritance in excess of this would be likely to disappear, not so much because it would have been deliberately stamped out, though this might be the case, as because the need and opportunity for it would alike have gone.

There has been a good deal of dispute among economists about the extent to which the inheritance of wealth is in modern societies the principal cause of inequality. Its influence is likely to be greater in older settled countries than in new countries still largely at a pioneering stage, since the older countries have already much larger masses of inherited wealth and usually greater opportunities for investing it securely so as to perpetuate its existence. Invested money, from which the owner simply draws a revenue without venturing it in risky undertakings, is in old settled countries largely self-perpetuating. There are losses of course and men do sink from class to class on occasion, but under ordinary conditions in such countries reasonable prudence secures the perpetuation of wealth once acquired.

In older countries also there are usually fewer opportunities for the rapid acquisition of wealth by those who start life without it. There are some of course, and there are plenty of chances for the rich to become richer. But the older and the more settled in its economic habits a country is, the more likely wealth is to go to those who have some already and the smaller is the proportion of men likely to rise from nothing to great fortunes.

There can then be no doubt that in the older settled societies inheritance is a very big factor indeed in causing economic inequality, although the whole question of the relation of inheritance to economic inequality demands a more thorough investigation than has as yet been made. It counts for a good deal not only in perpetuating large fortunes but also in giving those who inherit even quite small fortunes a very long economic start over those who do not.

In the newer countries the influence of inheritance is probably less decisive, both because the current accumulation of new capital bears a higher proportion to the amount of inherited wealth and because, conditions being less settled, there are more opportunities for a man to rise either by accumulating capital for himself out of profits or by being placed at the head of a big business on the score of ability alone. Such countries, however, as they grow in wealth rapidly accumulate heritable property and begin to develop a propertied class distinct in some degree from the class of successful business men. The United States has already a large class of this type, although inherited wealth still probably counts relatively for less in America than in either Great Britain or France.

In nearly all countries the proportion of those dying who have anything substantial to leave is very small indeed. In England and Wales, according to estimates made by Professor Henry Clay, before the World War only 15.6 percent of all persons possessing incomes of their own had a total capital wealth of over £100 and only 6.8 percent had more than £500. Even in 1920-21, when prices were very high, only 24.6 percent had £100 or over and less than 12.3 percent £500. In Prussia, according to Dr. King, only 14 percent had over 6000 marks in 1908.

Inheritance in any economically significant form is thus confined to a comparatively small section of the population. Nor can there be any doubt that in the main those who die leave most of their money to persons of the same social class as themselves. There are of course many small legacies to poor relatives, servants and employees, but apart from charitable bequests the bulk of property tends to pass to relatives occupying a similar social status to those from whom they inherit. This causes inheritance even on a basis of freedom of bequest to act as a powerful force in perpetuating inequalities in the distribution of wealth and income. Gifts and bequests to charities have indeed an opposite tendency, for they usually result in the distribution of increased incomes or services to the poorer sections of the population. But in no country, not even in the United States, is the amount of gifts and bequests for education and charity large enough seriously to affect the distribution of wealth in society as a whole. Comprehensive figures are unavailable on this point but, according to Wedgewood, less than 1 percent of the estates of French persons were bequeathed to public and charitable institutions in 1912 and 1913. In Great Britain the proportion is probably somewhat higher. It is fairly certain that in the United States a much larger percentage of the wealthy man's property goes through gifts *inter vivos* or bequests to philanthropic institutions than in England or on the continent, although in the United States such bequests now seem to be declining.

The inheritance of wealth lies then at the very roots of the class structure of modern communities. Class divisions would not necessarily disappear if it were abolished; for if the change stood alone, differences of wealth and income arising within the lifetime of the individual would still be enough to lead to wide differences in education and in equipment for money making. The rich parent could still give his children

a preferential start in life by expensive professional training or by setting them up in business for themselves. It is, however, inconceivable that the abolition of inheritance should stand alone. If it came about it would certainly be accompanied by increased public provision for higher education, which would undermine class monopolies in the professions, and by a restriction of opportunities for the application of private capital to business enterprise. Inheritance is by no means the only source of class divisions and great economic inequalities, but it is difficult to imagine their persistence in anything like their present forms without it. This is the case, however, primarily because of the other social changes which the abolition of inheritance connotes and only secondarily because of the direct effects of its abolition.

Short of abolition the rights of bequest and inheritance can of course be drastically restricted without the immediate necessity for any complete change of economic system. Mill's proposal to limit the amount that can be inherited instead of the amount that can be bequeathed has nowhere been acted upon; but one state after another has introduced some form of inheritance taxation and thus confiscated to the public purse some part of the fortunes of those who die with any considerable property. Such taxation has many forms in different countries; but it usually involves some degree of graduation according to the total value of the estate and also some discrimination according as the property is left to nearer or remoter relatives or to strangers. Although inheritance taxes are not chiefly a method of influencing freedom of bequest but rather a method of taxing big accumulations of wealth, they are not nearly considerable enough to have noticeable effects in reducing inequalities of wealth or income.

It is sometimes suggested that this failure to reduce inequality by taxation of inheritance is in itself a sign that most big fortunes are made rather than inherited and that inheritance is not so powerful a factor as has been supposed in causing inequality of income. But this suggestion ignores the great power of large fortunes to attract more money. If it were not for death duties, the distribution of income in Great Britain would be still more unequal than it actually is. What is left of such fortunes after taxation, however, is ample enough to serve as a preferential basis for the accumulation of further wealth. It is not denied that in Great Britain, unlike the United States, economic inequality

has been somewhat diminished of late years; but this is a result far more of the heavier taxes on incomes than of the taxation of inheritance.

It is in effect impossible to divide the wealth of the richer classes into two parts, the one inherited or the result of those gifts *inter vivos* which are really a form of inheritance, and the other acquired by the owners' personal exertions; for this is to ignore the truth that money breeds money and that it is far easier for a man who inherits money both to make more and to save out of his income than it is for one who starts with nothing. Fresh capital accumulations are in part the result of saving out of inherited fortunes, and the invested capital on which large profits are made is in part inherited money. What a man makes in his own lifetime may be fully as much a result of his inheritance as of his personal skill, luck or exertion. It is therefore a sheer impossibility to isolate in any quantitative sense the results of inheritance, but it is fully possible to say that income and property would be very differently distributed if everyone started with an equal supply of capital.

However great the social and economic influence of inheritance is admitted to be, the institution will not lack defenders as long as it is considered necessary for the accumulation of capital. It is true that the growing tendency for industries to finance their own expansion out of reserved profits has led to some substitution of group for individual saving and has thus to some extent lessened the need for private accumulation out of incomes; and it may be that this method of group saving foreshadows a time when industry will be wholly self-financed or, at any rate, when the calls for capital out of individual savings will be much reduced. But for the present individual investment continues to play a large part in financing production and it is therefore deemed necessary to keep up the rate of saving. Some economists, notably J. A. Hobson, have suggested that in prosperous times capitalist societies attempt to save and invest too large a proportion of their incomes, which results in a deficiency in the demand for consumers' goods. There is much to be said for this view, which would provide an economic justification for measures tending to reduce the volume of saving in prosperous times, including the higher taxation of inheritance at such times and the appropriation of the proceeds as revenue and not as capital. It cannot be held, however, that this tendency to oversaving exists, in the same degree at any rate, when times are bad; while it

is precisely at such times that the state, hard pressed for revenue, is likeliest to use capital taxes for meeting current expenditure.

In any case the need for private accumulation of capital does still exist in a considerable degree in modern societies and inheritance will continue to find defenders on the ground that it promotes this end. It will indeed be defended not so much in spite of its tendency to aggravate inequalities of wealth and income as because of this tendency; for there is a school of economists that maintains that the richer the rich are, the richer will the poor be also, because the highest production and the highest wages will be secured when profits are highest and profits will tend to be highest where the accumulation of capital has been pushed to the furthest point. This view has of course some plausibility; admittedly inequalities of wealth and income are greatest in the richest societies and these have also the highest real wages. But it does not follow that the high productivity on which this wealth is based is the product of economic inequality or that unrestricted inheritance is necessary to its maintenance.

Admitted, however, that any severe restriction on the right of inheritance would, unless the state used the proceeds as capital, reduce the rate of capital accumulation; the question is how far severer taxation of inheritance would react on the individual's will to accumulate.

That high inheritance taxation stimulates gifts *inter vivos* is evident enough. That it does not have this effect in a far greater measure is a clear sign of the tenacity with which the aging tend to cling to their money. Most of them remain unwilling to surrender ownership or control to their children, except on a small scale, despite the possibility of avoiding a good deal of taxation. This bears out the point that in general the psychological incidence of taxation is upon the inheritor and not on the testator.

If this is so, it seems reasonable to suppose that taxes on inheritance will not much affect the will to save. It is moreover highly relevant to point out that among the richest members of a community saving is largely automatic in that it represents surplus income beyond the desire to spend. Clearly saving of this sort will not be affected by taxation except to the extent to which gifts *inter vivos* and charitable donations may be stimulated. Graduated taxes on large incomes by reducing automatic saving react far more decisively on the volume of accumulation than do death duties.

In the case of small fortunes taxes on inheritance where they exist at all are usually at a low rate and unlikely to affect saving, although they may to some extent direct it to forms of saving that are exempt from the tax, such as life insurance policies.

If a state should, however, merely by gradually increasing its taxes on inheritance seek to abolish inheritance altogether, it would reach a point, far short of actual abolition, at which the taxation would react sharply on the volume of saving. Accordingly any state pursuing such a policy would have to take steps in the course of it to bring into being alternative methods of capital accumulation on a collective basis and would have to apply the product of its inheritance taxes as capital and not as income.

Plans for the abolition of inheritance are necessarily anticapitalistic; for they involve either direct collective operation of capital resources or collective control and rationing of their use. They are not necessarily socialist but they do imply the supersession of capitalism as an economic system. It is not possible to advocate the abolition of inheritance on purely ethical grounds without being prepared to suggest alternative methods for the accumulation of capital; and to this difficulty socialism presents the most obvious answer. Moreover if inheritance is abolished or even if taxation of it is pushed very far, it becomes inevitable for the state as the taxing authority to take over actual assets, since beyond a certain point the proceeds of inheritance taxes could not possibly be collected in money. The state then would become in effect the heir and it would be difficult to avoid the conclusion that the state should administer the assets acquired by way of taxation.

The economic and the ethical aspects of the question are thus closely intertwined. Many persons who are not prepared to defend inheritance directly on ethical grounds nevertheless uphold its economic desirability, because they mistrust the effects on production of an approach to socialism, and are ready to advocate the taxation of inheritance up to the point at which they think it will interfere with the private accumulation of capital. This was in essence Bentham's position and it has still powerful upholders in the world today.

To others the ethical arguments, which are directed partly against inequality in general and partly against inequalities resulting from inheritance and not from a man's own exertions, constitute a strong inducement to consider

favorably any economic system which will make these inequalities unnecessary. The case for socialism, which is based on a mingling of economic and ethical considerations, gains here a powerful reinforcement; for it can be pointed out that what the legatee in fact inherits is not a sum of money but essentially a claim on the productive capacity of society. This capacity, the result of centuries of development, is in reality a social product, the common heritage of civilization, in which it would seem that all are entitled to share. In other words, when a man saves under present conditions, the result is to secure to him much more than he saves because he acquires a preferential share in the social heritage. It seems unfair that a man should be able to pass on this preferential claim to his successors without limit. Most states have passed legislation to prevent "perpetuities" and to limit testators' rights to prescribe for generations ahead how their money is to be used or to order that it shall accumulate at compound interest for a long period. But in spite of these restrictions there is nothing to prevent the claim itself from being perpetual; this seems to many people to be manifestly unjust.

It is true that capital does not in most cases survive forever in an unbroken line of succession. Physical instruments of production, except land, wear out; and even where the capital they represent is perpetuated by the provision of adequate allowance for depreciation, there are hazards which do in the long run bring the life of most forms of business enterprise to an end. Even states though they cannot go bankrupt do sometimes repudiate their debts and so confiscate the property of their bondholders; and apart from the wasting of the assets themselves there is likely at some point in a long succession of heirs to arise a wastrel who will dissipate his patrimony. But with the growth of trust companies and the corporate organization of business this becomes increasingly a less important factor. It is indeed often stated that the life of most inherited fortunes is not long except in the case of landed estates; and this is probably true if it is meant that large fortunes are seldom kept together for many lives in the hands of a succession of sole heirs. There is a trend toward division of fortunes as well as to wastage; and this tends to become more pronounced as property can be more and more easily divided through the operation of the joint stock system. But property rights are not any the less perpetuated because they are divided up; the division

does not make strongly for greater equality, because the property even if it is divided is usually left in the main to persons of the same social class.

It is possible to imagine a form of socialism or, at any rate, collectivism that would perpetuate inheritance much in its present form. If the state taking on industry, borrowing the money from its citizens as it borrows now in the case of nationalized or municipalized undertakings, inheritance could continue, the inherited property taking the form of perpetual state bonds or stocks. It is, however, difficult to imagine such a system being of long continuance, for it would clearly render the private owners of the capital completely functionless, mere receivers of interest or dividends with no claim to income based even on a show of service. Under such conditions they would certainly before long suffer expropriation, for no economic or social institution can survive permanently if it has lost the function which it came into being to perform. Socialism of this type would end, although it had not begun, in the abolition of inheritance or in its restriction to things other than claims arising out of loans to the state.

Belief or disbelief in the institution of inheritance is therefore very closely linked up with belief or disbelief in the private ownership and operation of the instruments of production. The abolition of inheritance or its limitation to personal possessions of use is in practise if not necessarily in theory a socialist doctrine. Peculiar interest therefore attaches to the handling of the problem in Soviet Russia, where almost the first step of the new government in 1918 was to decree the abolition of inheritance of all property above 10,000 rubles except for provision for meeting claims of relatives based on proved need. This attitude has since been modified and under a decree of 1922, the civil code (1923) and a decree of 1926 the limitation on the value of the property which can be inherited is removed; direct descendants, dependents and surviving spouses are entitled to share; and furniture and household effects go to the housemates of the deceased. Wills can be made so as to vary the disposal of property among the legal heirs but not so as to leave it to others; and in the absence of testamentary provision distribution among those entitled to benefit is equal.

The new provisions mean far less than appears on the surface since they are indeed rather the result of the Communists' success in destroying private property than any token of a reversal of

ideas or policy. The Soviet government can now afford to permit inheritance because it does not permit the accumulation of wealth in private hands and because, when accumulation does exceptionally still occur, it has plenty of other methods besides the prevention of inheritance of breaking it up. The private trader or the *kulak* (rich peasant) who succeeds in amassing property has no security at all of being able to retain it for his own lifetime; and the question of his right to pass it on to his descendants therefore loses most of its importance. The one form of private property which has hitherto remained in being is now on the road to destruction by the placing of agriculture on a collective basis; and when that has been completed, the citizens of the Soviet Union will have only personal possessions to leave, except for the continuance for the time being of a small quantity of state bonds. For the Soviet Union does still to a small extent supplement the collective supply of capital by borrowing from its citizens.

This shows that, when a transition from capitalism to socialism is made abruptly and is accompanied by a general confiscation of existing wealth, the question of inheritance ceases at once to possess much economic importance; for both the existing capital and the power of fresh private accumulation are taken away at a blow. Moreover while private accumulation may survive for a time it is more likely to be attacked by the direct confiscation of property from living owners than by the removal of the right of bequest or inheritance.

Inheritance as a contemporary problem is therefore essentially a problem of capitalist society; and it cannot be abolished or restricted within narrow limits so as still to leave capitalist society intact. If private persons are not to inherit, the state must; and state inheritance means state control of the use of capital. Propaganda for the abolition of inheritance is in most cases in effect propaganda for socialism; and the question of inheritance, as distinct from taxation of it within limits that will not destroy its essential character, thus merges in the wider question of a socialist versus a capitalist framework of society. This is why there has never been any important social or economic movement making the abolition of inheritance its main objective.

If it is impossible to abolish inheritance without altering profoundly the economic structure of society, it is no less out of the question to retain inheritance in anything like its present form if that structure is radically altered in a socialist

sense. For inheritance is bound up with the division of society into distinct social and economic classes and influences this division the more profoundly because in advanced communities the better off classes tend to have lower birth rates than the poorer sections of the people and therefore to keep their wealth within a narrow range. The institution of inheritance helps indeed to foster this control of numbers among the well to do, since they are conscious of the need for limitation as a means of preserving their class status. Even where primogeniture remains the custom this limiting influence holds good; for the disinherited younger children are likely to be provided for during the testator's life by expenditure on education and training, by enabling them to start in business or by marrying daughters off with at least some "portion" of their own. It is true that the growth of feminism has tended to cause further diffusion of property, for daughters are now more often than before treated on an equality with sons. But this may even accentuate the tendency toward family limitation among the middle class.

The future of inheritance then appears to depend, on the one hand, on the growth in modern communities of collective methods of capital accumulation and of the control of business resources and, on the other, on the pressure of the popular movement toward a less unequal distribution of incomes; for this movement, ethical as well as economic in its driving force, results in forms of taxation which limit saving and impinge on profits and thus leads to the necessity of alternative methods of saving and of insuring adequate production. The two influences thus meet and mingle; and it is not easy to see how the institution of inheritance, save in a greatly modified form, can indefinitely stand out against them, despite the fact that it is for the moment strong.

To the extent to which it is restricted there is a return from the individualistic notion of property to a communal notion, based now on a unit wider not only than the family but also than the clan or tribe, since property comes to be regarded as part of the social heritage of the modern community, legitimately charged with the maintenance of all its members. This notion may further undermine, as it has already undermined in Soviet Russia, what remains in industrial societies of the conception of family solidarity. It will inevitably affect the institution of marriage and the relations between parents and children. But even in capitalist society the family

has largely lost its economic significance and become, save in respect of inheritance, mainly a social unit whose bonds have grown far looser even within living memory. If inheritance goes, the last economic bond will be snapped, at any rate beyond the period of the children's upbringing; and that too is likely to become increasingly a social function.

G. D. H. COLE

*See:* PROPERTY; WEALTH; FORTUNES, PRIVATE; ACCUMULATION; PLUOCRACY, CLASS, EQUALITY; INHERITANCE TAXATION; SOCIALISM, SUCCESSION, LAWS OF PRIMOGENITURE, MARITAL PROPERTY.

*Consult:* Beaglehole, E., *Property* (London 1931) p. 215-16, and table IV, p. 244-47; Lowie, Robert H., *Primitive Society* (New York 1920) p. 243-55; Wedgwood, Josiah, *The Economics of Inheritance* (London 1929); Dilton, Hugh, *Some Aspects of the Inequality of Incomes in Modern Communities* (London 1920) p. 281-343; Stamp, Josiah C., *Some Economic Factors in Modern Life* (London 1929) ch. II; Clay, H., *Property and Inheritance* (London 1923); Gabain, K. E. von, *Das Erbrecht in Sowjetrussland* (Berne 1929); Tager, Paul, "Le régime successoral dans le droit soviétique envisagé dans son évolution historique" in *Société de Législation Comparée, Bulletin*, vol. IV (1926) 531-58.

**INHERITANCE TAXATION.** The inheritance tax is a levy made on the occasion of the transfer of property at or in connection with the death of the owner. It may take the form of a tax on the estate as a whole, on the respective shares of the beneficiaries or on both. The tax is variously held to be a direct tax upon property (of testator or recipient) or an indirect tax upon the act of the transfer or receipt of property at the death of the owner. In modern times the inheritance tax has been incorporated into the tax system of every important country.

Transfers of property at the death of the owner were subject to the property transfer taxes of ancient Egypt and Greece. The element of death, however, was purely incidental in these taxes. The first true inheritance tax was the Roman *vicesima hereditarium* instituted in 6 A.D., a 5 percent tax on collateral inheritance and bequest. With various modifications this tax persisted for several centuries.

During the Middle Ages there were certain feudal dues—the relief, the *Erbkauf* and the heriot—which resembled inheritance taxes; in several countries the royal relief evolved into a rudimentary national inheritance tax. By the end of the fourteenth century several forms of death tax had been established in the Italian and German commercial cities. The seventeenth century

saw the enactment of inheritance taxes in the Dutch provinces and in a number of German principalities. By the end of the seventeenth century there were inheritance taxes in the four national states, England, France, Spain and Portugal.

The substantial development of the European inheritance tax occurred during the nineteenth century. From a disorganized set of minor probate duties the English tax expanded into a full fledged estate duty; it was extended from personalty to real property; its rate schedule, at first regressive, became proportional and then progressive. The present English estate duty is supplemented by the legacy duty on movable property and the succession duty on immovable property; both taxes, levied on the shares received by the individual beneficiaries, are graduated according to the degree of the beneficiary's relationship to the deceased. The French inheritance tax, established in 1796, had rates graduated according to the relationship of the beneficiary or heir to the deceased and discriminated between realty and personalty; during the nineteenth century the discrimination according to the character of the property was eliminated and the relationship graduation was augmented; in 1901 the rates of the tax were made progressive. Italy in 1862 adopted an inheritance tax modeled on the French law; its rates were made progressive in 1902. The Prussian collateral inheritance tax of 1873 was followed by similar taxes in the other German states; growing agitation for an imperial inheritance tax resulted in 1906 in a national inheritance tax with relationship discrimination and progressive rates.

The general character of European inheritance taxes has undergone no radical change during the past twenty-five years. During the World War and the post-war years because of the pressure of increasing fiscal burdens and the growing political power of propertyless groups rates increased and progression was sharpened; since 1921 in France combined maximum rates of estate and inheritance taxes would call for a rate of 98 percent, were not the maximum limited by law to 80 percent. Various discriminations have been experimented with to bring these heavy taxes more in line with various concepts of fiscal justice. During recent years inheritance taxes have yielded over 10 percent of the national tax revenue in England, over 5 percent in France and less than 1 percent in Germany.

A dozen American states attempted the levy of

inheritance taxes during the first three quarters of the nineteenth century, but their statutes were badly drawn and poorly administered and most of these early state taxes were repealed within a few years of their levy. Effective use of the inheritance tax did not occur in the United States until the New York inheritance tax law of 1885, carefully drawn and well administered, proved a success. Other states were encouraged to experiment with this form of taxation, and by 1902 twenty-six states levied inheritance taxes of one sort or another. The taxes of this period were all proportional, usually embodied relationship graduation and were generally limited to collateral inheritance and bequest. In 1892 New York led the way to extending the tax to direct heirs. Wisconsin in 1903 enacted a progressive inheritance tax which soon became the model for other states.

In the years 1797 to 1802 the federal government collected a stamp tax on successions by inheritance to personal property. A federal inheritance tax was also levied during the Civil War decade. The inheritance tax embodied in the federal income tax act of 1894 was abandoned when that income tax was declared unconstitutional. Four years later a short lived progressive tax was levied as part of the Spanish War tax program. Not until 1916 did the federal government make an inheritance tax a permanent part of its tax system. The tax levied in this year was an estate duty applying to estates in excess of \$50,000 with a progressive rate schedule rising to a maximum of 10 percent on the excess of an estate over \$5,000,000. Subsequent revenue acts increased the rates of this tax until in 1924 the rate on the excess of an estate over \$10,000,000 was 40 percent. The maximum rate was reduced to 20 percent in 1926, but was raised to 45 in the revenue act of 1932.

A feature of the 1924 federal estate duty was the allowance of a credit to taxed estates to cover state inheritance taxes charged against them; the maximum credit allowance was 25 percent. When the rates of the federal tax were lowered in 1926, this credit was increased so that it ranged from 15 to 75 percent; this credit schedule was maintained in 1932 when the estate duty was raised. The effect of this credit was to eliminate the burden of state taxes on estates where the rates of the state taxes did not exceed the credit allowed under the federal tax. State inheritance taxes were thus deprived of their effect of driving rich individuals to adopt residences in states levying no or low inheritance

taxes. The consequence of this federal estate tax credit was an increase in the number of states levying death taxes; in 1932 only Nevada was without an inheritance tax. The rates of the state taxes were generally increased so as to take full advantage of the credit; in the process many states changed the form of their taxes from inheritance taxes levied on the shares received by the beneficiaries to estate taxes levied on the full estate left by the decedent, so as to obtain an exact adjustment of the rates of their inheritance taxes to the credit allowed under the federal estate duty.

Because of the large initial exemption of \$100,000 and the generous credit allowance to cover state inheritance taxes the federal government received little revenue from its estate duty in 1926-32. For fiscal year 1929-30 its receipts from this source were \$64,842,725, less than 2 percent of its total tax revenue. State governments during their 1929 fiscal years derived \$148,591,827, about 9 percent of their total tax revenue, from their inheritance taxes.

There has been much dispute both in Europe and in America as to the legal character of the inheritance tax. One school of nineteenth century thought, stemming from Bentham, held that the inheritance tax can be viewed as an exercise of the state's inherent right to regulate inheritance and bequest. Another, developed by Münzinger and championed by Bluntschli, Wagner and Ely, held that the state as feudal overlord of the individual was coheir in every estate and took its share in the form of an inheritance tax. These two theories never gained wide acceptance, and the inheritance tax is now universally viewed simply as a tax levied under the state's taxing power.

Distributive justification of the inheritance tax has been based on many theories of tax justice. Moderate transfer fees have been defended as a recompense to the state for its supervision of the ownership of the property of a deceased person. Heavier inheritance taxes have been justified as a recompense for the protection accorded to property during the lifetime of its owner. The *quid pro quo* doctrines of tax justice, however, afford little encouragement for inheritance taxation, and appeal to them is generally made by the opponents rather than the supporters of inheritance taxation. The ability and sacrifice doctrines have been heavily drawn upon in defense of inheritance taxation, particularly of progressive inheritance taxes. The deceased, it is argued, has no further use for his

property, while to the heirs and beneficiaries it is an unearned windfall whose reduction by a tax involves no sacrifice whatsoever. Several writers, like Graziani and Adams, have chosen to view inheritances or bequests as simple increments of income received by the beneficiary and so subject to all the ability and sacrifice doctrines applying to income. Seligman justifies the inheritance tax both as a tax on accidental income and as a payment for the privilege of inheritance conferred by the state.

Several unusual distributive justifications for inheritance taxes are to be noted. A scattered group of writers have defended this tax on the ground that it constitutes a lump sum payment of taxes evaded by the deceased and his estate during the lifetime of the deceased or a lump sum payment of periodic taxes, such as the income tax, not conveniently levied in their true form. Certain American writers have viewed the state as a silent partner in the accumulation of individual fortunes and have described the inheritance tax as a method employed by the state to realize on its partnership share. Individual radical writers have urged inheritance taxes as a method of breaking down large family fortunes and so reducing inequality in the distribution of wealth, although the socialist school of writers have generally ignored the inheritance tax, viewing it as merely an undesirable palliative of the evils they are attacking.

The levy of inheritance taxes has raised many practical issues which have not yet achieved final solution. There still exists open disagreement as to the respective advantages of the inheritance tax levied on the shares of an estate received by individual beneficiaries and heirs and of the estate tax levied on the entire estate left by the deceased. The latter is the form of the English estate duty and of the American federal estate tax, while the former is employed on the continent and was until recently the characteristic form of American state inheritance taxes. The great advantage of the estate tax is the simplicity of its determination: only one calculation is involved for each estate and there are no complications caused by life estates, remainders and contingencies. Furthermore a progressive estate duty with a given schedule of rates has a higher yield than an inheritance tax with the same schedule of rates; the fractions of an estate received by the individual beneficiaries and heirs rarely involve the application of the same high bracket rates to which the undivided estate would be subject. The disadvantage of the estate



tax is its maladaptation to the ability and sacrifice doctrines of tax justice. Only by strained reasoning can the ability and sacrifice theories be made to support the use of progressive rate schedules in an estate tax. Furthermore an estate tax is not adapted to relationship graduation; where such graduation is effected in an estate tax, as in the Canadian provincial death duties, it is at the cost of simplicity and facility of administration.

Relationship discrimination is itself an open issue in inheritance taxation. Its strongest theoretical foundation is the family sense, the feeling that the direct heirs of a deceased person have a greater claim on his property than collateral or unrelated beneficiaries, that the former are but realizing a latent property right in the estate while to the latter their shares are pure windfalls. Some writers, like Scheel and Puviani, have attempted to make out a case for relationship graduation on the basis of the sacrifice doctrine of taxation; they argue that the value of the property coming to direct heirs is lessened by their grief over the death of the decedent, that this diminution of the value of an inheritance decreases with the distance of the relationship between beneficiary and deceased and that the relationship graduation of an inheritance tax offsets this "grief sacrifice." In the Latin countries, where the sense of family remains strong, relationship graduation in death taxation is carried out to minute detail. In the English speaking countries, on the contrary, the trend seems strongly against such graduation, except for generous rate and exemption allowances to the widow and children of the deceased, who in gaining an inheritance have lost their breadwinner.

Progressive inheritance taxes, as previously indicated, do not derive much support from the ability doctrines of taxation. If the tax be viewed as one on the property owned by the decedent, it is difficult to see wherein the ability doctrines can apply to a dead man. If the tax is considered a levy on the recipients of the estate, their tax-paying ability is determined not only by the shares of the estate received by them but also by the property owned by them; surely a rich man receiving a small inheritance has a greater tax-paying ability than a poor man receiving a large inheritance. These considerations prompted several German writers to advocate the graduation of the tax rates on the basis of prior wealth of the heir plus his inheritance. The German and Italian inheritance taxes of 1919 made pro-

vision for supplementary graduation of the tax rates according to the prior wealth of the heir. Effective determination of such prior wealth proved administratively impracticable, however, and in both Germany and Italy this provision was abolished in 1923.

Beginning with Adam Smith fiscal economists have pointed out an important discrimination in the inheritance tax; namely, that it bears unequally upon the property of families according to whether deaths in the family follow each other at short intervals or are widely spaced. With the heavy rates now in effect in some countries a rapid succession of deaths in a family could easily wipe out a large family property. Various proposals that the tax on an estate be proportioned to the number of years it had been enjoyed by the deceased have never been embodied in legislation. Instead, beginning with the Chilean inheritance tax of 1878, many taxes have included a provision for a rebate of the tax on any part of an estate which has paid an inheritance tax within a period of preceding years, usually five. Such a provision is found in the American federal estate tax and in the inheritance taxes of fifteen states.

Several of the European inheritance taxes involve a rate discrimination intended to favor decedents or beneficiaries with large families. In France the inheritance tax of 1917 allowed a beneficiary a 10-percent reduction in his tax for each child above the number of three. At the same time a progressive estate duty called the *taxe successorale* was levied on the estates of decedents who died leaving fewer than four children; besides progression based on the size of the estate the rate schedule of this tax was graduated in accordance with the number of the children left by the deceased; the rates on the estate of a deceased leaving three children ranged from  $\frac{1}{2}$  percent to 3 percent, while those on the estate of a childless decedent ranged from 2 percent to 24 percent. The Belgian tax of 1919 provided for a 2-percent reduction of the tax on a beneficiary for each of his children. It is doubtful whether such fiscal discriminations can have any effect on the birth rate of a country. Rather they provide an excuse for the levy of tax rates higher than might otherwise be acceptable to the popular temper of the times. The favoring of a beneficiary or heir with a large family finds ample justification under the ability doctrines of taxation, since it can logically be argued that the expense of maintaining his large family definitely reduces his taxpaying ability; the levy of special rates on

the estates of decedents with few or no children, as under the *taxe successorale*, does not enjoy such support in ethical theory.

Soldiers and sailors who die while in the national service are sometimes favored under inheritance taxes. The English death duties have accorded full or partial exemption to such decedents since 1694. Exemption to the estates of officers and men who fell in the World War was introduced into the French and American death taxes.

Certain minor discriminations found in earlier inheritance taxes are no longer common. The seventeenth century inheritance taxes of the Dutch provinces and some of the inheritance taxes of the Canadian provinces and of the American states levied discriminatory rates on bequests to or inheritance by alien heirs. The only defense for such discriminations is a rather narrow nationalism, and in most cases they have been rendered inoperative by international treaties of fiscal reciprocity. Another outworn mode of discrimination is the levy of special high rates on the transfer of property by intestate succession. Such discrimination was found in the early death duties of England, Sweden, Uruguay and Brazil. It probably represented a belated aftermath of the mediaeval ecclesiastical prejudice against intestacy and it no longer has a place in inheritance tax legislation. A third special discrimination peculiar to the inheritance taxes of the American states was the levy of penal rates on such part of an estate as had evaded other state taxes during the lifetime of the deceased. Such a provision appeared in the Wisconsin tax of 1899, the Louisiana tax of 1904, the New York tax of 1917 and the Connecticut tax of 1918. In every case the penal tax proved administratively impracticable and was soon dropped.

A unique proposal by the Italian economist Rignano has recently received much favorable attention. His suggestion was to levy a supplementary estate tax on such part of an estate as had been received by the deceased as gift, inheritance or bequest during his lifetime, that is, on the property which had not been accumulated by him through his own efforts. Rignano's underlying idea was frankly socio-ethical rather than fiscal. His proposed tax would result in breaking down large fortunes by striking at their root—the transfer intact from generation to generation of large family properties; levied with the high rates advocated by Rignano, such a tax would provide a "painless transition to socialism." In the more moderate form suggested by

its American and English proponents it would be less of a weapon of social revolution and more of a fiscal expedient. To date no inheritance tax law has embodied the proposal.

The history of death tax legislation shows a steady broadening of the scope of the statutes to block possibilities of evading the tax. Fictitious debts created in favor of beneficiaries, joint estates passing by survivorship, testamentary trusts, provision for excessive remuneration to executor beneficiaries, deathbed donations and gifts made prior to and in anticipation of death have all been brought within the scope of death tax statutes. Only the last named class of transfers still presents a problem to the death tax administrator. The federal and state inheritance tax laws in the United States have sought to circumvent this form of evasion by providing that gifts made "in contemplation of death" shall be taxed as part of the estate transferred at death. At first the statutes set specific periods, ranging from six months to six years prior to death, within which time gifts made by a property owner would be deemed attempts to avoid the inheritance tax and should therefore be taxable as part of the estate. The American courts have shattered this arbitrary attack, and at present the most that tax administrators can claim with regard to such gifts is the presumption that they were made in anticipation of death. A more direct approach to this problem is the levy of a gift tax as a supplement to an inheritance tax. All gifts except deathbed donations are subject to such a gift tax irrespective of whether they are made to avoid the inheritance tax or are innocent of ulterior motive. Gift taxes of this nature are common in Europe. The American federal government levied such a tax in 1924, abolished it two years later and enacted another gift tax in 1932, with a rate schedule ranging from  $\frac{3}{4}$  percent to 33  $\frac{1}{3}$  percent.

Outright evasion of an inheritance tax is difficult if the tax is administered with reasonable effectiveness. Administration of the early American state inheritance taxes was usually left to the probate courts, charged with supervision of the administration of estates. The indifference of the officers of these courts to the fiscal duties arbitrarily imposed upon them led to the failure of these early state inheritance taxes. When administration of the tax was transferred to central state agencies, evasion of the tax was readily checked. Administration of inheritance taxes in the United States and England is facilitated by the circumstance that the executor or adminis-

trator of an estate who is charged with payment of the tax is an officer of the probate court which appoints him and is accountable to the court for his actions. The opportunities for successful evasion of the tax are so slight and the penalties which would be incurred by such abuse of the executor's or administrator's official obligations are so heavy that there is little incentive to tax evasion. In the continental countries, where control over the administration of estates is not so effective, the fiscal authorities rely to a greater extent on minute and inquisitorial examination into the lifetime transactions of the deceased.

It is generally accepted that the inheritance tax is not shifted. It reduces the shares of estates received by beneficiaries and heirs, and it is beyond their power to pass their tax burden to other economic classes.

It is frequently argued that an inheritance tax is injurious to economic development because it destroys capital, diverts it from productive uses and discourages the incentive for saving, thus acting as a deterrent to accumulation of capital.

The first argument, sponsored by Ricardo, is based on the assumption that a tax "measured" by capital is necessarily paid out of capital property. This, however, is not the case. Fixed capital remains unimpaired regardless of the tax on it at the death of the owner. It is true that the payment of a high inheritance tax which is in the nature of a sudden liability may result in forced liquidation and consequent depreciation of assets. But the loss here is purely individual. What is lost by the seller is gained by the buyer. From the social aspect the economic significance of the property remains unimpaired. Furthermore the various provisions for the distribution of the tax over a number of years, in England as many as eight, and the growing practise of providing for the payment of the tax through insurance obviate the necessity for forced and hasty liquidation.

With regard to the effect of inheritance on the volume of liquid capital available for investment it must first be determined whether the high tax rates on inheritance are offset by reductions in other taxes and if so whether the reductions apply to that portion of wealth which is likely to be saved, that is, turned into capital, or to the part of wealth which is likely to be diverted to the purchase of consumers' goods. In the former case the loss in the volume of saving occasioned by the payment of the inheritance tax will be offset by the greater saving capacity of other taxpayers. In the latter case, which is more frequent in democratic countries, where the reductions

will apply to taxes of wide incidence, the amounts so remitted will be applied to current consumption and the payment of the inheritance tax will undoubtedly constitute a net reduction in the volume of capital available for private investment. The final judgment in this instance hinges on the broader problem of the relative merits of public expenditure and private investment; moreover in view of the increasing participation of governments in productive enterprises the distinction loses in importance.

The argument concerning the adverse effect of high inheritance taxes on saving and accumulation is theoretical and devoid of any factual verification. A priori it can be argued with equal plausibility that the existence of high tax rates will stimulate the affectionate parent to greater accumulation in order to offset the loss which his estate will sustain from the tax.

At present the inheritance tax may be considered to have completed the experimental formative stage of its evolution. By scholars and legislators alike it is accepted as a valid source of an appreciable quota of tax revenue. Attempts at intricate graduation and discrimination to effect non-fiscal designs have been for the most part abandoned, and the trend of recent years would seem to be toward ever greater simplicity and uniformity. The major inheritance tax problem facing legislators today is that of overlapping tax jurisdictions and double taxation as between states and between nations; interstate and international reciprocity agreements together with court decisions in federal countries like the United States have gone far toward eliminating the worst features of this abuse.

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See: TAXATION; PUBLIC FINANCE; INHERITANCE; SUCCESSION, LAWS OF; FORTUNES, PRIVATE; ACCUMULATION; DOUBLE TAXATION; AUBAINE, DROIT DE.

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**INITIATION.** A systematic ceremonial induction of adolescent youths into the full participation in social life is a practically universal trait of the peoples of simpler culture. Such practises represent efforts to rivet the youth securely to the regnant social order and are devices for the development of social cohesion. The initiation rites are prosecuted with special vigor when the exclusive, personal interests of the group or class are threatened by exigencies, such as initial contact with alien peoples, migration, depopulation, threat of complete extinction or absorption into outside cultures, or the *Heimweh* provoked by a novel environment. The elders under these stresses try to maintain group consciousness and custom largely through the extensive emotional and mental schooling of the manhood ceremonies, because only in this way can the social heritage be perpetuated as a living thing. Thus in Nyasaland the rite is at present being performed at an earlier age than formerly so that the youths can receive tribal instruction before they come under mission influence.

At puberty physical and emotional changes in the child become evident, and with this sexual maturity comes a critical juncture in the social position of the individual in view of the potential disturbances which may be effected in the social order. The threat to the perpetuation of things as they are produces the need for endowing the youth with knowledge of his mores and with sympathy for them and with an understanding of the responsibilities and rights accompanying sexual maturity. The initiation signifies not simply physical but full social adulthood, and the two do not necessarily converge. Considerations of a purely cultural nature may determine the age of initiation, as, for example, in the New Hebrides and Australia, where the requirement of an entrance fee results in old men being initiated along with youths.

The prestige associated with passage through

the manhood ceremonies is such that the person uninitiated is invested with complete social obloquy. A child is also in an ignominious position until this event. Although socialization is fundamentally a gradual, cumulative affair, the accession to social maturity in primitive society is conceived as climactic and abrupt. The past of the individual is considered to be cut off and during the course of initiation an exceptional, marginal environment is staged in which he is outside the normal life. In this period, called *rite de passage* (to use van Gennep's term), the ordinary cement of society crumbles—license, theft, arson, violence are often allowed. Promiscuous sexual intercourse is allowed the novices among the Papuans; even the conversation of the Kaffir boys may be of a dubious nature to show that shame no longer exists; moreover they are allowed to rob gardens and kill cattle with impunity. Among the Nandi of East Africa the novices are given purges and have their heads shaved; among the Indians of Virginia it was the custom to give them emetics "whereby remembrance of the past is obliterated." Among the Xosa of South Africa clothes, which are a social asset, are discarded and ordinary speech inverted. These measures heighten the sense of a break from the past, which is often reinforced by taking the neophytes by simulated violence from the company of the women. A strict regime of secrecy surrounds the rites, and as the candidate emerges it is believed that a rebirth has occurred. In the sociological sense this designation is justified, since with new costume (including such tribal mutilations as circumcision) and a new name the objective evidences of the new personality indicate a complete severance with the futility of childhood.

Most abiding in the metamorphosis wrought on the initiate is the strenuous inculcation of the pattern of sentiments and behavior which, it is thought, best promotes tribal solidarity and prosperity. The initiation thus serves as the chief vehicle to link generations in the transmission of the culture complex. The individual is now an active contributor to the food supply, a family head and a cult participant; he is in intimate association with the ancestral glories of his tribe—a complete and full fledged tribesfellow. Of these various duties food getting is the prime concern. The series of abstentions, fasts and privations ceremonially undergone, as, for example, in the Adaman Islands, is intended to develop the realization that not only the power to obtain food but also the right to use it without danger is

something that one owes to society and that its bestowal involves acceptance of the corresponding obligation to share the catch or yield with one's fellows. Other customary outward marks of affiliation, such as dress, are assumed for the first time; and the right to other pleasurable activities, such as smoking and drinking, are conferred. Usually the primitive educational system is climaxed in the didactic tactics of the initiation: law, morality, tradition, hygiene and cult hocus focus in a varying degree of agglomeration compose the curriculum offered in the initiation bush or hut.

Through all initiation exercises there is set up an atmosphere of continuous excitement, novelty and tumult that is intended to enlist the fervent interest of the youth. Put on edge through ingenious torments, sleeplessness and nerve racking frights, the candidate becomes keenly sensitive to the power of his preceptors and indelible, life long impressions are made. The technique is illustrated among the Bechuanas, where the boys in a state of nudity engage in a dance during which the men of the village pummel them with long, supple wands while asking them questions such as "Will you guard the chief well?" "Will you herd the cattle well?" In this way is enforced the sentiment that success rests in conformity—and power in the hands of the elders. Those who wince or demur or who cannot pay the necessary fee are killed or decalated for life.

Initiation rites in the more complex, historical cultures are generally assumed to be functions of specific institutions or subgroups rather than of the folk as a unit, largely since the employment of written language makes possible the use of more consecutive pedagogical devices of less spectacular nature. To custodians of the cult and to professionalized religious groups particularly pass the functions designed as means for the transmission of the general power of social bonds—a mystification or abstraction of the cohesion required to maintain the existing social order. Active participation in the organized religions requires passage through the ceremony of Communion or confirmation in Christian churches and that of the *bar-mitzvah* in traditional Judaism, ceremonies which have absorbed much of the solemnity and ritual of pagan rites. With the greater economic potency of private property, chattels, slavery and the like there arise the invidious interests of the aged, the men and the professional groups, which can be enforced or shared only through the medium of

surrounding entrance rites with an aura of secrecy. Thus investiture with the trade and professional secrets in the guilds of the Middle Ages took on the proportions of esoteric ceremony akin to the magical regeneration crisis occurring when the neophytes were admitted into the Greek mystery cults. Many religious and trade groups adopted the esoteric tradition of puberty as a protection against penetration or for survival, since the *sacralia* are revealed only on this occasion to the initiated. In recent and contemporary society initiation and entrance ceremonies often acquire the air of incongruity or buffoonery as anachronisms in their use by fraternal societies, clubs, universities, subversive political movements and the like. Yet the common thread essentially characteristic of all types of initiation lies in the integrative and subordinating tendency of a social group to draw its members into a workable unity—a unity continually threatened by youth or alien.

NATHAN MILLER

See: SOCIAL ORGANIZATION; ADOLESCENCE; EDUCATION, PRIMITIVE; CEREMONY, RITUAL; FASTING; DANCE, TABU, SECRET SOCIETIES.

Consult. Miller, Nathan, *The Child in Primitive Society* (London 1928) ch. x; Goblet d'Alviella, E. F. A., "L'initiation, institution sociale, magique et religieuse" in *Revue de l'histoire des religions*, vol. lxxx (1920) 1-25; Webster, Hutton, *Primitive Secret Societies* (New York 1908); Loeb, E. M., *Tribal Initiations and Secret Societies*, University of California Publications in American Archeology and Ethnology, vol. xxv, no. 3 (Berkeley 1929); Speiser, Felix, "Über Initiationen in Australien und Neu-Guinea" in *Naturforschende Gesellschaft, Basel, Verhandlungen*, vol. xl (1929) 53-258; Willoughby, H. R., *Pagan Regeneration* (Chicago 1929) chs. vii, x, Hall, G. S., "Initiations into Adolescence" in American Antiquarian Society, *Proceedings*, n.s., vol. xii (1897-98) 367-400, Reik, T., "Die Pubertätsriten der Wilden" in *Imago*, vol. iv (1915-16) 125-44, 189-222.

INITIATIVE AND REFERENDUM. The initiative is a device by which any person or group of persons may draft a proposed ordinance, law or constitutional amendment and by securing in its behalf a designated number of signatures may require that such proposal be submitted to the voters for their acceptance or rejection. The referendum, on the other hand, is an arrangement whereby any measure which has been passed by a city council or state legislature may under certain circumstances be withheld from going into force until the voters have had an opportunity to render their decision upon it. Thus the initiative and referendum logically go together and supplement each other. They were

grouped with the recall (*q.v.*) of public officials in the movement in the early part of the twentieth century for "more democracy to cure the ills of democracy."

The initiative and referendum are by no means new features in the mechanism of popular government. All ancient democracy was direct democracy. In the Greek city-states all legislation was initiated by the people and authorized by direct popular vote without the intervention of representatives. In the cantons of the Swiss republic the initiative and referendum have had a virtually continuous history from earliest times down to the present day. Even in the United States the initiative and referendum are among the oldest of native institutions. The initiative, for example, was given recognition in 1777 in the first constitution of the state of Georgia, which bestowed upon the people the exclusive right to propose constitutional changes. The referendum was brought into use before the adoption of the earliest American state constitutions and has been compulsory in the process of constitutional amendment in practically all states ever since.

But the use of the initiative and referendum in the process of ordinary lawmaking is a relatively modern development in the United States, although sporadic examples may be found in various states during the latter half of the nineteenth century. More particularly the referendum was used as a means of expressing the direct voice of the people in certain localities on such matters as bond issues and the sale of intoxicating liquors. Not infrequently moreover state legislatures and city councils referred to the people some other controversial matters upon which they could not themselves agree.

Not until the closing years of the nineteenth century, however, did any American state authorize the use of the initiative and referendum as regular instruments for the making of ordinary laws. This first step was taken in South Dakota in 1898; Utah followed in 1900, Oregon in 1902 and seventeen other states during the ensuing three decades. Two other states have adopted the referendum but not the initiative.

The chief reason for the spread of direct legislation in the United States is to be found in the impatience of the people with the work of their state legislatures. By reason of the lack of authoritative leadership, the persistent lobbying on the part of special interests and the intermittent control of legislative bodies by political bosses a great deal of dissatisfaction with the work of

these legislatures developed during the closing years of the nineteenth century. People came to the conclusion that by their own direct action they could hardly do worse and might do better. Consequently they took into their own hands the power to make and to reject laws—not as a procedure for everyday use, but merely as a method to be used when the desired results could not be had in any other way.

The first step in the exercise of the popular initiative is the framing of a proposed ordinance, law or constitutional amendment. This is usually undertaken by some organization. Then it becomes necessary to secure a designated number of signatures in support of the proposal. From 5 to 8 percent of the qualified voters is the usual requirement. The petition is then submitted to some designated public official, who checks the names and if he finds them sufficient makes out a certificate to that effect. After this the measure is placed on the ballot, usually in abbreviated form or by title, and the voters record their decision upon it at the next regular election or at a special election called for the purpose. When a measure has been adopted by the people in this way it cannot ordinarily be amended or repealed by any action of the legislature. Generally speaking, the referendum follows the same general lines, except that the petition merely demands that a particular measure passed by the legislative body be submitted to the whole electorate before being put into effect.

Both initiative and referendum have been widely used by municipalities and by states, especially in the western part of the country, during the past thirty years. Sometimes as many as thirty questions have been placed on the ballot for decision by the voters at a regular state election. These proposals have been of every type, ranging from matters of fundamental policy to altogether trivial issues, from the levying of a state income tax down to the length of the luncheon hour in a city's fire department.

This submission is usually accompanied by a flood of propaganda on the part of the interested groups. It was anticipated that individual voters would study the various questions, make up their minds and cast their votes accordingly. To some extent the voters do this, especially when only a few questions are submitted; but with twenty or thirty questions on the ballot the great mass of the voters either follow the advice of some organization or are influenced by the advertising campaign. It has been demonstrated that a sufficiently vigorous publicity campaign

can usually encompass the adoption or defeat of any measure in which the people do not feel that they have a definite interest.

In practise moreover direct legislation has proved to be lawmaking by a minority. On the average not more than 80 percent of those registered vote on election day, and the proportion is usually much smaller. Moreover many of those who vote give all their attention to candidates and do not concern themselves with the questions on the ballot. Hence measures are sometimes adopted or defeated at the polls by only 25 or 30 percent of the whole electorate.

The adoption of the initiative and referendum was urged a quarter of a century ago by the progressive elements, who took for granted that if the people were allowed to legislate directly they would give their assent to progressive measures. On this basis the conservatives fought the movement in its early stages, while liberals welcomed the initiative and referendum as weapons with which to curtail the political power of the vested interests. But direct legislation has not proved to be revolutionary; on the contrary, it has been at least of equal value as a bulwark of conservatism. Voters in American cities and states have not hesitated to reject proposals for adopting the single tax or undertaking municipal ownership of public utilities, for giving pensions to city employees or imposing progressive income taxes. The use of the initiative and referendum appears to be slowly but steadily lessening in the United States. This may be a symptom of declining faith in political democracy and of increasing interest in some form of pluralism.

A part of the same progressive movement and closely related to the referendum was the demand for the recall of judicial decisions advocated by Roosevelt in his campaign of 1912 and adopted by Colorado in the same year. Under this proposal judicial decisions declaring invalid laws passed by the state legislature would be subjected to popular vote under conditions similar to those set forth for the legislative referendum. If a majority of those voting upheld the law, it would become valid despite the decision of the court. The movement made no headway and the Colorado provision was never invoked.

Outside of the United States the initiative and referendum have been used most frequently and effectively in Switzerland. There too, however, the response of the voters has almost uniformly been less than in the choice of parliamentary representatives. The average vote at initiative and referendum elections has been slightly less

than three fourths of the average vote at elections for the National Council, although it has on one occasion gone above the latter average. As in the United States, the effect of direct legislation has been slightly conservative.

Direct legislation was accorded a great deal of favor in the democratic post-war constitutions of European countries. Germany adopted the initiative and the referendum for the country as a whole, the largest political unit to attempt their use; they were also adopted by the German *Länder*. The adoption of direct legislation in the post-war constitutions was characterized by a number of innovations. Most interesting of these were the powers given the president and one third of the lower house in connection with the referendum; the use of the referendum to decide deadlocks between the two houses; the automatic dissolution of the Estonian Seimas following a popular vote contrary to the vote of the Seimas on a particular measure; and the German provision that an absolute majority of the qualified voters is needed to carry a referendum proposal involving constitutional questions and that a majority of the qualified voters must vote in any referendum in order to make its results valid. The complications resulting from these variations have militated against the practical utility of the initiative and the referendum. In actual practise they have been employed to a very slight extent in these countries, even less than in the United States.

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*See:* DEMOCRACY; LEGISLATION; REPRESENTATION; LEGISLATIVE ASSEMBLIES; MACHINE, POLITICAL; PUBLIC OPINION; PROPAGANDA; RECALL; PLEBISCITE.

*Consult:* For a full list of earlier books, Munro, W. B., *A Bibliography of Municipal Government in the United States*, Harvard University, Publications of the Bureau for Research in Municipal Government, vol. ii (Cambridge, Mass. 1915) p. 48-56, and New York, State Library, Legislative Reference Bureau, *Bibliography of Books and Articles on Initiative, Referendum and Recall 1912-1924* (Albany 1924); Lowell, A. L., *Public Opinion and Popular Government* (new ed. New York 1926) chs. xi-xv; Schmitt, Carl, *Volksentscheid und Volksbegehren*, Institut für ausländisches öffentliches Recht und Völkerrecht, Beiträge, vol. ii (Berlin 1927); Hall, Arnold B., *Popular Government* (New York 1921) chs. vi and viii; Bonjour, Félix, *La démocratie suisse* (Lausanne 1919), tr. by C. L. Leese as *Real Democracy in Operation: the Example of Switzerland* (London 1920) chs. iv-vii; Brooks, R. C., *Civic Training in Switzerland* (Chicago 1930) p. 107-18; Headlam-Morley, Agnes, *The New Democratic Constitutions of Europe* (London 1928) ch. viii; Thoma, Richard, "Referendum in Germany" in *Society of Comparative Legislation and International Law, Journal*, 3rd ser., vol. x (1928) 55-73.

**INJUNCTION.** This very effective judicial order usually commands a party to a suit and if necessary commands his associates to refrain from action which the court considers to be wrongful or a hindrance to the attainment of justice. Less frequently it commands the performance of acts conducive to justice. Disobedience to the injunction is contempt of court, punishable by imprisonment or other severe penalties. With rare exceptions all questions as to the issue of the injunction and disobedience thereof are decided by a court without a jury.

Injunctions originated in the English Court of Chancery. Requests for them by litigants indicate that they were granted as early as 1400. Several injunctions are recorded during the fifteenth century, but the first of which the text is extant dates from 1483 (1 Cal. Ch. cxiii).

The sources from which the chancellor derived the injunction are obscure. Although several writers have emphasized the resemblance of its language to the Roman law interdict, the methods of enforcing the latter were very different and much feebler. Any direct imitation of the interdict by the chancellors is unproved and improbable, but the interdict had a remote influence through its long development in the canon law. The ecclesiastical interdict forbidding religious services in a particular place offers a much closer analogy to the injunction. The canon law recognized other forms of orders forbidding specified acts, and since the chancellors were almost invariably churchmen until the sixteenth century they would very naturally apply in civil litigation a type of remedy which had been found effective in ecclesiastical controversies. A second probable source was the procedure of the common law courts. For nearly two centuries before the earliest indication of injunctions in Chancery the writ of prohibition had issued against waste—injuries to land by tenants. This writ sometimes differed from the injunction in that the order was directed not to the defendant but to the sheriff, who could take a *posse comitatus* and stop the waste. Many other types of wrongs were subject to prohibitions and subsequently, like waste, to injunctions. A third probable source lay in other proceedings in Chancery itself. For instance, subpoenas issued at the start of an equity suit commanded the defendant under a penalty to appear and answer the bill. It was only a step to impose a penalty for failure to obey some other command of the chancellor during the course of the suit. It is significant that injunctions apparently began

about thirty years after the earliest subpoenas.

The early chancellors were bound to no rigid and settled procedure. They were looking about for any remedy that might prove effective. This experimental attitude is illustrated by a Chancery suit about 1400 (Selden Society Publications, vol. x, Sel. Cas. in Ch., no. 70) asking for a writ directed to the sheriff and justices of the peace commanding them to order the defendants to allow the plaintiff to occupy his land without disturbance—a counterpart of the common law writ of prohibition. In another suit the chancellor might dispense with the officials as intermediaries and address the writ to the defendants themselves—a true injunction. This makes it even clearer that the injunction was a natural development of methods of enforcing obedience which were in use in England in the fourteenth century.

The subsequent history of the injunction is bound up with the general history of equity. As the equitable jurisdiction of Chancery spread over new fields, the scope of the injunction correspondingly widened, for it was one of the most powerful weapons for carrying out the chancellor's determination of rights. Resort to the injunction was also stimulated by the gradual disappearance of prohibitions and other preventive common law remedies which proved unsuited to the mechanism of trial by jury. Until 1700 injunctions were likely to be used for two main purposes. First, they protected interests in land, then the chief form of property, although some cases involved chattels like title deeds, jewelry and heirlooms. Secondly, legal proceedings or judgments founded on unjust grounds were frequently enjoined by the chancellor, who thus corrected the defects of the common law courts, a practise which aroused the resentment of the law judges and culminated in the famous controversy between Coke and Ellesmere. Thenceforth if the rules of equity conflicted with those of the common law, the injunction enabled the rules of equity to prevail. The growth of business in the eighteenth and nineteenth centuries led to new types of private wrongs for which the injunction was needed. It was also employed against public nuisances as urban congestion rendered these more numerous and more injurious. With the disappearance of separate courts of equity in England and most of the United States and the consolidation of legal and equitable powers in the same courts, all trial judges (except those in petty courts) acquired the power to grant injunctions. But the constitutional guaranty of a



jury trial does not apply to injunction proceedings, for it was not customary in equity courts when the constitutions were adopted.

Injunctions are classified chronologically into *ex parte* restraining orders, temporary injunctions and permanent injunctions. These may be conveniently discussed in reverse order. Permanent injunctions are granted at the end of a suit after both sides have fully presented their evidence and the case has been decided on the merits. Temporary (or interlocutory) injunctions are granted during the course of the suit and framed to prevent acts which might prejudice its final results. Sometimes such injunctions are said to preserve the status quo, but this does not necessarily mean the maintenance of the existing situation without change. The phrase merely describes the situation which the court thinks it just to maintain until the merits have been decided. Temporary injunctions are issued after notice to the defendant and a brief opportunity for both sides to present evidence and arguments, but without the fulness required for permanent injunctions. They may also be dissolved before the final decree if the defendant shows that they were improperly issued or have become undesirable. The plaintiff is frequently required as a condition of temporary relief to give bond. *Ex parte* restraining orders resemble temporary injunctions and are frequently called by the same name; but they are issued at the outset of a suit on the basis of proof presented by the plaintiff alone in the form of affidavits or oral testimony, without any chance for the defendant to be heard or to cross examine. This drastic remedy should be given only on a showing of great urgency, and the defendant should be afforded an early opportunity to attempt to vacate or modify the order.

Injunctions are also classified according to their form, as prohibitory (negative) and mandatory (affirmative). Since the very numerous simple affirmative orders to sign deeds, pay money and the like are not called injunctions, the term mandatory injunction is applied only to orders for the performance of more complex or unusual acts, and such orders are much less frequent than prohibitory injunctions. A century ago mandatory injunctions were theoretically regarded as improper, although they had been granted in several early cases. Defendants, however, were in effect required to perform affirmative acts through the ingenious but not ingenuous method of negative language forbidding them to allow the existing situation to continue.

Thus if a defendant had wrongfully cut a doorway in the plaintiff's brick wall, the court would enjoin him from permitting the opening to remain. The English judges have now repudiated these roundabout methods. During the nineteenth century courts were especially hostile to mandatory injunctions ordering the construction of a building, the operation of a railroad and other detailed or prolonged activities, but they are now increasingly ready to regard such objections as merely a factor to be weighed against the hardship upon the plaintiff if left to his action for damages. As Judge Hough has said, "The tendency of the times is to 'take on' harder and longer jobs" [Kearns-Gorsuch Bottle Co. v. Hartford-Fairmont Co., 1 Fed., 2nd, 318 (1921)]. Mandatory injunctions are usually permanent, because it would be harsh in most cases to make a defendant perform elaborate and expensive acts to which the plaintiff may prove in the end not to be entitled.

The definiteness of injunctions varies greatly with different judges. Some use general terms, such as forbidding any acts which operate "to the injury of the plaintiff" or "render his premises unfit for use and enjoyment as a residence by reasonable and normal persons." The defendant is thus left to ascertain for himself "how near he may with safety drive to the edge of the precipice, and whether it be not better for him to keep as far from it as possible" [Charles E. Hires Co. v. Consumers' Co., 100 Fed. 809 (1900)]. A preferable view is that an injunction is analogous to a criminal statute and ought to be equally definite and clear in its terms; when practicable it should discriminate carefully between the acts which are lawful for the defendant and those which are unlawful [Collins v. Wayne Iron Works, 227 Pa. 326 (1910)]. An unlearned man should be able to understand it without employing counsel. Flexible decrees may also be framed directing the use of remedial devices with the hope that they will end the injury and at the same time avoid the necessity of closing down the defendant's business until he has had an opportunity for installing and testing such devices. Meanwhile the case can be kept open for further action after the results of experimentation have been ascertained. Unlike a judgment for damages, which is necessarily simple and final, an injunction can contain many qualifications adapted to the facts and can be modified from time to time if changes are made desirable by new evidence or new conditions. This flexibility renders the injunction an ad-

mirable instrument for judicial handling of the complexities of modern life.

Injunctions are applied in a great variety of well settled situations. In connection with the specific performance (*q.v.*) of contracts both mandatory and prohibitory injunctions may be issued. The commonest use is against torts injuring real and personal property and various intangible business rights. A threatened or existing wrong will ordinarily be enjoined if the legal remedy (an action for damages) is inadequate. For instance, the defendant threatens to destroy a grove of oaks, which no money damages could replace. The prevention of "irreparable injury" is sometimes stated to be an indispensable requisite for injunctions, but this is true only if the phrase is understood in a loose sense to include situations where the legal remedy is inadequate for other reasons besides the impossibility of physical replacement. Thus an injunction may be granted when the defendant is insolvent, so that a judgment at law would be worthless; or when the extent of the prospective injury to the plaintiff's business could not be accurately measured by a jury; or when the defendant threatens a long series of wrongs which would lead to a vexatious multiplicity of suits. Likewise in many cases not involving torts the injunction may be used to obtain joinder of causes of action growing out of the same transaction.

Other acts enjoined include breaches of trust, improper foreclosures and judicial sales, the exercise of eminent domain powers before compensation to the owner is paid or secured and (in some states) the enforcement of illegal taxes. Partners can enjoin improper uses of the firm property; stockholders sometimes have a similar remedy against waste of the corporate assets and other wrongful acts by officers and directors; taxpayers can prevent the unlawful expenditure of public money.

The frequent assertion that injunctions will not issue to protect interests of personality, like reputation or freedom from bodily restraints and mental annoyances, rests on no principle of justice. Indeed the injunction is much better adapted than the jury action for damages to deal satisfactorily with some subtle injuries, such as a series of insulting letters persistently sent to a nervous person. Recent courts have been increasingly willing to enjoin wrongs to personality. Each type of such injuries, however, presents special considerations which ought to make a judge cautious in granting relief. For instance, it is doubtful whether an injunction can practically

succeed in terminating the illicit association of a plaintiff's wife or daughter with her paramour. Again, improper expulsions of members of clubs, churches and other associations injure the member's personal enjoyment and standing in the community; but indiscriminate judicial interference by injunction or mandamus (*q.v.*) with the internal affairs of these associations may cause objectionable results.

The desirability of the injunction for dealing with numerous civil wrongs is generally recognized, but serious doubts have been aroused by its rapidly extending use in the United States for two other purposes—checking activities which might be prosecuted criminally and up-setting administrative orders and decisions.

Since the 1890's the injunction has been increasingly employed in the United States as a substitute for criminal proceedings. The situation recalls the Wars of the Roses, when criminals were brought to justice in Chancery because the law courts were helpless to cope with the widespread disorders of the time and judges and juries were cowed or corrupted by powerful offenders. But since 1500 crimes as such have had to be established in the criminal courts, where the accused has a right to trial by jury. However, additional factors of an equitable nature might bring some criminal acts within the scope of injunctive relief. For example, a threatened criminal act might also be a private wrong which would cause irreparable injury to property; then the owner could enjoin the act regardless of its criminal aspects. This principle, occasionally used for centuries, has become very important within the last few decades, because upon it rests the frequent issue of labor injunctions (*q.v.*).

Another long established principle allowed the attorney general or other official to enjoin as well as prosecute public nuisances, like a highway obstruction, a chemical factory spreading poisonous fumes and other structures which constituted a source of continuing injury to the public health and convenience. This power has likewise been much enlarged of late through legislation or judicial decisions bringing many additional crimes under the head of public nuisances. Prosecutors have used the injunction to break up prize fights, gambling dens, red light districts and illegal saloons. The Volstead Act and other statutes against liquor selling authorize "padlock injunctions." Many vice and liquor laws allow these injunctions to be obtained by a group of neighboring taxpayers when the district at-

torney takes no action because he is too busy or lazy or he is too tolerant or friendly to the lawbreakers.

How far can criminal acts be removed from the constitutional guaranty of a jury trial by the simple process of labeling them public nuisances? Conservative judges and writers would limit the extension to crimes which roughly resemble the older types of such nuisances and they insist that the so-called nuisance must possess a local habitation of some permanence, from which disorders and public annoyances radiate and which can serve as the focus of the attack by the injunction. A more radical view dispenses with these requisites and allows the public prosecutor to enjoin unlocalized groups of persons from continuing alleged illegal activities, such as large strikes or criminal syndicalism. An occasional syndicalism statute, as in New Hampshire, expressly authorizes such injunctions; but Kansas and California judges have endeavored to break up the Industrial Workers of the World by blanket injunctions without any legislative sanction other than the statutory creation of this new crime.

This resort by public officials to the injunction to stop illegal establishments and revolutionary organizations is defended on several grounds. Public safety is then much more surely and rapidly maintained than by criminal proceedings. The police will not arrest for some of these offenses, and juries will not convict. In any case a jury trial means delay, and the grand jury where still required adds another burden. In a criminal trial the defendant's guilt must be proved beyond a reasonable doubt, while a padlock injunction or a jail sentence for contempt can be obtained on a bare preponderance of the evidence. Furthermore a prosecution cannot be brought until a crime has been committed, while an injunction can often forestall the offense and thus prevent any injury to the public. Finally, an injunction is sometimes more humane to defendants. If successfully prosecuted they will be punished for acts which perhaps they thought legal, whereas an injunction gets rid of the objectionable establishment without punishing individuals, so long as they obey the court order. An injunction tells the defendant exactly what he must not do and so serves as a much fairer warning than a general criminal statute, which men sometimes disobey without knowing it. This partial absence of the punitive element avoids the vindictive atmosphere surrounding a criminal trial and makes it easier to obtain a de-

cision in the state's favor. In short, injunctions are much more efficient than prosecutions.

These frequent public injunctions, however, against acts which were formerly prosecuted criminally raise grave objections. The accused is deprived of trial by jury and of all the normal safeguards of the criminal law. Even if the defendants are in fact lawbreakers, the community may gain less from the increased efficiency of the injunction than it loses from the resentment caused. The responsibility in criminal prosecutions is shared by the jury, but in these injunction suits it falls entirely upon the judge. The turning of equity judges into superpolicemen creates the risk of arousing a hostility which may eventually lead to drastic restrictions upon their powers, even over matters where equitable relief is badly needed for the accomplishment of justice. The breakdown of the criminal law in the United States is the real reason for the increasing use of the injunction against criminal activities. It would certainly be better to reorganize the administration of criminal justice than to continue to rely upon this substitute.

The injunction is also much used in the United States against the administrative acts of public officials, such as the collection of taxes, the regulation of business and the fixing of rates by public utility commissions. This injunctive relief is especially important when the constitutionality of the statutes under which the officials are acting is questioned. Although the plaintiff must allege the existence of some normal ground for equitable jurisdiction, such as multiplicity of suits or the probability of irreparable injury, the courts do not scrutinize these grounds closely. The real purpose of the injunction is to obtain a judicial review of the administrative order; and in some jurisdictions—for instance, the federal courts—it has become the regular method of accomplishing this result, which may be attained elsewhere by an entirely different procedure, like *certiorari* in New York. The injunction has the advantage of raising questions of the validity of administrative action at an early date, but it is absurd for one branch of the government to be trying to do something while another branch is exerting itself to prevent it. The process is like putting on the brake while the accelerator is pressed down. Additional objections arise when lower federal courts block state administrative bodies by this summary method, which although desired by plaintiffs may not be the wisest way of adjusting delicate conflicts between different parts of the federal system. Because of the readi-

ness with which single United States judges enjoined orders of the Interstate Commerce Commission or state commissions on constitutional grounds, a series of acts of Congress required three federal judges to participate in such action and imposed other restrictions (U. S. Code, tit. 28, sects. 47, 380). Perhaps a more straightforward method than the injunction for the judicial review of administrative decisions would be desirable in both state and federal courts.

The modern law of continental Europe has no precise counterpart to the injunction. Its work is performed by several different remedies. Unlawful acts are prevented by administrative orders and police action more than in the United States. The civil tribunals, which recognize no distinction between law and equity, enforce their judgments whenever possible by execution *in natura*, by which through the aid of officers comparable to sheriffs the plaintiff gets the very thing to which he is legally entitled instead of a money substitute, as in Anglo-American actions at law. A similar remedy in Anglo-American courts would often render injunctions needless. Interlocutory relief is less common than in Anglo-American law but can be obtained through attachment and other forms of summary procedure when speed is necessary. Since administrative decisions cannot be reviewed in the civil courts but only in administrative courts, anything resembling the injunction against official acts is naturally impossible.

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See: EQUITY; LABOR INJUNCTION; WRITS, LEGAL; CONTEMPT OF COURT; JURY SYSTEM; CRIMINAL LAW; PROCEDURE, LEGAL; DAMAGES; SPECIFIC PERFORMANCE; NUISANCES; MANDAMUS.

Consult: *Select Cases in Chancery A.D. 1364 to 1471*, ed. by W. P. Baildon, Selden Society Publications, vol. x (London 1896), Great Britain, Record Commission, *Calendars of the Proceedings in Chancery*, 3 vols. (London 1827-32) vol. i; High, J. L., *A Treatise on the Law of Injunctions*, 2 vols. (4th ed. Chicago 1905); Spelling, T. C., *A Treatise on Injunctions and Other Extraordinary Remedies*, 2 vols. (2nd ed. Boston 1901); Pomeroy, J. N., *A Treatise on Equity Jurisprudence*, 6 vols. (4th ed. by J. N. Pomeroy, Jr., San Francisco 1918-19) vols. iv-v; Martin, W. A., "Injunctions" in *Corpus juris*, vol. xxxii (New York 1923) 1-51; "Injunctions" in *Ruling Case Law*, vol. xiv (1916) 298-489; Klein, Jacob, "Mandatory Injunctions" in *Harvard Law Review*, vol. xii (1898-99) 95-118; Durfee, E. N., "Nebulous Injunctions" in *Michigan Law Review*, vol. xix (1920-21) 83-86, and vol. xxiii (1924-25) 53-56; Chafee, Zechariah, Jr., *Cases on Equitable Relief against Torts* (Cambridge, Mass. 1924), *The Inquiring Mind* (New York 1928), and "The Internal Affairs of Associations Not for Profit" in *Harvard Law Review*, vol. xliii (1929-30) 993-1029;

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INLAND WATERWAYS. See WATERWAYS, INLAND.

INNOCENT III (Lothar dei Conti) (1161-1216), pope from 1198. Innocent's activities as pope were largely concerned with the two problems of reviving and propagating the orthodox faith and firmly establishing the political power of the papacy. In connection with the first, his pontificate is famous for the Albigensian crusade, which he finally launched in 1207 as a last resort to extinguish that heresy; and for the fourth crusade to the East, which, after he had failed to divert it from Zara and Constantinople, brought him the glory as well as the responsibility of establishing the Latin rite in the western portion of the Eastern Empire. His management of the second problem marks one of the high points of papal influence over secular powers. The death of the Holy Roman emperor Henry VI in 1197 and the reaction against Henry's lieutenants in Italy allowed Innocent to assume shortly after his elevation a commanding position both in Germany, where the recognition of the future emperor depended upon his support, and in southern Italy and Sicily, where Henry's wife, Constance, became his vassal in order to secure protection for her son, the future Frederick II. In the matter of the vacant empire Innocent decided for reasons ultimately dictated by fear of the Hohenstaufens to support the Guelph candidate, Otto IV, against the two Hohenstaufens Philip of Swabia and Frederick. The reasons for his

decision he gave in his famous *Deliberatio* upon the courses open to him. In so intervening he provided the first legal basis for the papal right to confirm imperial elections, founding this right on the original transference of the empire by the papacy from the Greeks to the Germans. At the same time the eviction of the German governors from central Italy and Otto's oath never to unite central Italy with Sicily enabled Innocent to extend the Papal States to their widest boundaries. After 1204 he was complete master of Rome. He exercised feudal sovereignty over Portugal, over Aragon and, after he had broken down John's opposition, over England. He attached the Bulgaro-Wallachian kingdom to the Holy See. He intervened drastically in the affairs of the Scandinavian kingdom to support the local church reformers against King Sverre. With Philip Augustus of France he was never fully successful. In the face of the pope's exhortations and fulminations Philip refused for years to enter into conjugal relations with his lawful wife, Ingeborg. His great triumph came when the perfidy of the Guelph Otto IV forced Innocent to admit the correctness of Philip's view that Guelph domination in Germany was dangerous. Innocent had to excommunicate Otto and to secure his deposition by the princes and the election of the young Frederick as emperor. To end the trouble he had to organize Europe against the party which he had originally supported and to form a coalition with the Hohenstaufens and the French, which defeated Otto and his ally, King John, at Bouvines in 1214.

In the realm of political ideas Innocent III with his high yet cautious claims stands midway between Gregory VII and Boniface VIII. Christendom, he maintained, was not only a moral unity but a visible, concrete world state under clerical guidance; although it was governed by territorial rulers, yet each part and the whole must recognize the supremacy of the Roman See and the plenitude of power held by Peter's successor, the representative of Christ. But when he came to intervene in temporal matters Innocent cautiously limited himself to moral issues. He declared that he had no intention to pass judgment in matters of feudal custom (*judicare de feodo*) but only to decide cases of moral guilt (*decernere de peccato*), since it was his duty to snatch every Christian soul from mortal sin. His views on the relations between the civil and religious powers he further expressed in his decretal letter *Per venerabilem*, addressed to the count of Montpellier. No mediaeval pope has

had so strong a sense of responsibility for the moral welfare of Christendom. As a canonist he is of vital importance for his definition and classification of existing rules. His court formed a school of instruction for Christendom. In matters of detail his chief concern was for the purity of elections; for the integrity, discipline and educational standards of the clergy; for the conservation of church property; and for the unity of the faith on the basis of a dogma at once flexible and cautious. These matters were definitely provided for by the Lateran Council of 1215. As an administrator Innocent made important contributions to the organization of the papal chancery and to the development of the cursus. He also laid down rules for the detection of forgery. His pontificate saw a prodigious increase of the judicial and administrative business that came to the Holy See. He maintained touch with the various parts of Christendom through the system of legates so largely employed by Gregory VII. In contrast with the latter pontiff Innocent ranks as a diplomat and a business man rather than as a saint. But like the greatest administrators he never set the means before the goal. The assertion of the plenitude of power was for him an avenue to the salvation of souls—an end with which, as his letters and sermons show, he was constantly preoccupied.

E. F. JACOB

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INNOVATION. The changes or novelties of rites, techniques, customs, manners and mores which constitute innovation are usually thought

of as purposive. The actualities of the social process, however, do not validate this connotation. The attribution of intent is always retrospective. But the causes of innovation are too complex to be covered by merely personal intent. In so far as human existence is a process and not sheer repetition, the rise, the forms, the life cycles and the influence of innovations are the vital theme of history and the social sciences. Innovation includes in its range the transformations in food, clothing, shelter, defense against enemies and disease, tools and technologies of production and consumption, forms of play and sport, rituals and liturgies of religion, precedents of law, inventions in science and thought, styles and attitudes in literature and the arts. Every social institution is a field of innovation, no matter how conservative its intent and how standardized its techniques and procedures. The limit to innovation comes only at the point where the identity of an establishment itself is menaced.

Within this limit innovations may be numerous and rapid: the very individuality of the institution may consist in them. This is the case among the various divisions of science. The essential of each of these is the process of deliberate innovation which goes by the name of scientific method. Scientific method is simply another name for the gathering, testing and applying of innovations. How these innovations are reached is indifferent. Every innovation involves a certain contingency, a dimension of chance and luck; every innovation also begins as focal to some particular individual or very small group. Once a "scientific" mind has become aware of it, it is developed formally and tested experimentally, given its chance to succeed or fail. The work of breeders of animals, legumes, fruits; the invention and elaboration of machines; the transformations of the art of medicine in the last fifty years, in so far as these have anything deliberate in them, all rest on the presumption and use of scientific method. This is postulated wherever innovation is both deliberate and follows the gradients of social change. Where innovation is incongruous with those it must either struggle for its survival, establishing itself by means of a process of give and take with its environment, or be imposed by *force majeure*, as when after a revolution or a war the victor imposes upon the defeated a new way of doing or thinking.

Innovation may be slow or rapid, manifold or simple, but it is ineluctable. In a sense the mere lapse of time is innovating. Aging takes place in institutions and societies no less than in woods

and wines. This autogenous transformation through invariant repetition seems, however, never to occur in isolation. It is crossed and modified by other processes which add novelties a priori. Such are inventions, wars, crises and catastrophes, migrations, exhaustion of materials, exhaustion of interest (i.e. boredom). Boredom is a psychic force of innovation which deserves more attention than it has received. The revulsion which it generates and the subsequent searching and seeking are no small part of the dynamics of fashion, gaming, sport, crusades, exploration, scientific investigations and the like. All these involve contacts with changing environments, natural and human, osmosis or more violent impacts of cultures and consequent innovations.

The optimal conditions for innovation are a certain flexibility and readiness in the organic pattern of a society itself. These develop as a rule more easily in new societies, where a fresh start is being made; they develop also during a crisis such as a war, a profound business depression, a natural catastrophe or a revolution. At such times playing upon a ground of fear and uncertainty there is a feeling of the significance of the social adventure. Novelties are invited, projected and perhaps installed and domesticated; experiments are made and change may become a standard of public policy. Such was the case in Athens from the Persian wars through the Peloponnesian War and in the United States while the frontier lasted; it is now the case in Soviet Russia. Where custom coheres too firmly and authority is unshaken, the situation is reversed. In primitive societies the new way must be assimilated to the ways of the fathers before it can be accepted. Theocracies require that it shall confirm before it can be confirmed by the divine authority which they wield. Military or bureaucratic establishments reject it if it does not conform to the customary patterns and rituals of conduct. So does the institution of the law. In all these cases the variant is seen as a disorderly interruption of set routine and therefore a priori a heresy, a sedition and a danger. If its import is acknowledged and it is adopted it is usually denatured of all qualities inharmonious with the established procedure. Apparently only a crisis, the feeling of danger at hand, can transform this habitual inertia into a readiness to try new tools and ways. Thus the range and degree of international co-operation between the Allies during the World War, especially during 1917-18, have never been reached since and are being denounced in

peace by the very innovators who developed this cooperation during the war. Now in 1932 the whole world suffers because of the absence of this cooperation, which inherently would be far more competent in peace than in war. But now that the war crisis is over, the "elder statesmen" have relapsed into the elder ways. The peace crisis is insufficient to raise them out; and international cooperation, which goes inevitably with the diffusion of the industrial economy, is being held back by traditionalists in power anxious about the status quo of their rights and privileges. Should the crisis become profound enough, the innovation will be sped and facilitated.

Innovators are not necessarily rebels and the temper of innovation is not by any means the temper of revolt. Novelty, spontaneous deviations of the same energy, continually pour from the main stream of custom and convention. Thus the industrial revolution in England, the growth and diffusion of the factory system in the United States, in Germany and in Japan, took place mainly in the context of the old mores and on the initiative and by the effort of persons who were on the whole champions of those mores. Now the mores are being transformed and displaced by what they allowed. Again, the impact of photography and the theory of color vision on the painter's art constituted a fecundation of method and a diversion of ideals. The impressionists began by affirming the novelty and were forced into a defensive denying of the tradition. So-called modern movements are innovations only because of reaction against the innovation which photography itself represented. The intent of the post-impressionist schools was conservative; their achievements were innovations.

Nevertheless, innovators are forced into a combative position. For their novelties enter a social organization most of whose establishments are going concerns, and enter as competitors and deprecators of one or another. If they succeed in establishing themselves they become embodied in the organic flow of the mores. They cause that flow to deviate to a slightly different gradient definable by what they represent. This is what the city life of the Renaissance did to Christian society in Europe, what the fusion of the scientific with the technological attitude did to the eighteenth century mind and what the industrial system is doing to contemporary civilization. Of course there are programs of innovation whose dynamic is a reaction against the established order. Such programs sometimes function as

precipitates of deep lying emotions which are not disturbing enough to change the social order but do nourish a formulated opposition to it. The opposition becomes organized into cults and movements whose rituals and programs then identify it as a sort of antibody in the social organism. So Methodism grew to maturity in the Episcopal milieu of England. The single tax movement in the United States is such a development, and such also are cults of diet (like vegetarianism), of dress (like nudism), of health and of other goods of life. They arise as variants and survive as orderly antagonists within the nexus of the social process.

Since all innovations animate readjustments in the distribution and organization of social forces they automatically evoke the antagonism of those who are disturbed. If the antagonism is pervasive and deep, the innovation perforce lapses. If, however, it satisfies a want or nullifies an annoyance, however illusory, it gathers a following. If the following comes from any top stratum of the community, from the prestige carriers, the innovation may win a great deal of superficial favor without modifying the basic social processes. It may become fashionable, like Christmas trees among Jews; like the consumption of yeast, liver, tomato juice and other dietary nostrums; like the recession of the corset and the spread of nudism; like the cult of patriotism and militarism among women claiming descent from revolutionary fathers. The scope and duration of the fashion vary with the amount of effort that the adoption of the novelty is likely to cost; the effort must not be very great in any event. If the innovation is relevant to deep lying discontents or to feelings of insecurity, then it may change the direction of an institutional process and break the fashion cycle altogether. Thus emulative realization of western attitudes and standards has the effect of displacing *hara-kiri* as a social procedure in Japan and face saving suicide in China; it has unveiled the women of Turkey and unbound Chinese ladies' feet; it has created the nationalisms of the Asiatic peoples and is profoundly transforming the pattern and goal of their civilizations.

Innovations are mostly resisted out of motives of self-interest and fear. The new is quite usually synonymous with the unreasonable, the dangerous, the impossible. As William James pointed out long ago, rationality is a sentiment in which the feeling of familiarity is fused with that of congruity with our fundamental hopes and desires. Sometimes mere familiarity may become

identical with this congruity. Thus people resist changing their dietary habits in spite of the fact that this change is required by health, the social setting or religion; there are freethinking Jews who get indigestion at the very thought of pork and "liberated" Hindus who are upset by the idea of meat. Between love of food and love of God or country the difference is in degree, not in kind. All involve clinging to the habitual, familiar and secure. When that is felt to be menaced, the opposition to innovation becomes fanatical, as may be observed in the attitude of so-called patriotic societies in the United States toward "socialism" and "Bolshevism." One of the most curious of phenomena is met when the proponents of an innovation that has reached the point of toleration turn upon those who propose a more extreme innovation in the same direction, as is often the case with the socialists and the communists. All these attitudes rest fundamentally on a sentiment combining fear and insecurity. But they become rationalized as "loyalty to the principles of the fathers," "rugged individualism," "you can't change human nature," and the rationalizations are elaborated into philosophic systems demonstrating the foregone conclusion. Such are the various philosophies of racial supremacy, cultural superiority and the like. Where innovations have finally established themselves and compel recognition they are assimilated to the old order or the old order is assimilated to them by means of some formula. Thus in the United States "trusts" were feared at their origin and laws were passed to constrain them. But they developed into the dominant controls of the economic process; the established order has to count with them and acquiesce in them. The Supreme Court of the United States celebrated this necessity by the well known decision concerning "the rule of reason" [Standard Oil Co. v. United States, 221 U. S. 1 (1911)], which has resulted in the virtual nullification of the original intent to control the trusts rigorously.

In the light of the foregoing the social position of an innovator is determined, other things being equal, by the success of his innovation. Persons like Edison, Einstein and Marconi have by no means entirely overcome the resistance to their respective innovations. But they are honored at home and abroad. If Jesus of Nazareth can be called an innovator, the same thing holds of Him. For His status in Europe changed with the coming to economic and political power of the priests of His cult. The same thing is true of Lenin both

in Russia and abroad and would be of Henry George if his program could be imposed at least as those of Christ and Lenin have been. If, however, an innovation fails to establish itself, its projector may be thrown into jail, like Roger Bacon, or live a despised outcast all his days. Social position for the innovator, as for everybody else, is a function of proved and acknowledged power.

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*See:* INVENTION; CHANGE, SOCIAL; SOCIAL PROCESS; PROGRESS; CONSERVATISM; TRADITION; CONVENTIONS, SOCIAL; CUSTOM; FASHION; FICTIONS.

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**INQUISITION.** The Inquisition was the office of the mediaeval church for inquiry into heresy, which was commonly interpreted as obstinate adherence to opinions arbitrarily chosen in defiance of accepted ecclesiastical teaching and interpretation. It was an office not primarily of punishment but of examination and of instruction, and it attempted to secure the abjuration of their errors by the heretics whom it discovered. To a logical churchman of the time it represented the natural and merciful method of preventing the spread of doctrines which endangered the souls of all who heard as well as of all who communicated them.

In the eleventh and twelfth centuries popular frenzy against those who professed unorthodox opinions resulted in indiscriminate burnings of the suspected; their protection as well as their proper examination became necessary. In the absence of clear understandings as to the respective parts which the secular and ecclesiastical



authorities might play in the punishment of heretics the arrangements prevalent throughout Christendom were often the result of local agreements between the bishops and the king. In 1184 Lucius III and Frederick Barbarossa had arranged that the bishops should make the inquiry for heresies and excommunicate the heretics and that the secular arm should enforce the imperial ban of exile and undertake the destruction of suspected houses.

Decrees such as these were only spasmodically carried out, for as Catharism grew the problem became too general to be solved along local lines. The initial failure of Innocent III to convince the Albigensians by means of special missionaries, together with the crusade which in consequence he felt bound to undertake, made it clear that some more permanent prophylaxis was needed. This the normal canonical method of diocesan inquiry through the bishop was not strong enough to provide, since the bishop was a man of many duties and the task of discovering and examining heresy demanded both expert theological knowledge and an organized system of delation through trustworthy informers. The latter was to a certain extent constructed by the decrees of the Council of Verona, 1184, which directed that bishops in making periodical circuits of the dioceses for inquiries into heresy should compel trustworthy persons to denounce those who were *diffamati* for not living as good Catholics. The problem was how to secure the regular and effective body of witness of error, and for this task the ordinary church courts were just as inadequate as the special delegates sent by the papacy into disaffected areas.

Gregory IX organized these spasmodic efforts into a regular system. Permanent judges delegate were instituted to cooperate with the bishops in their inquiries. They were given power in 1233 to take action without appeal against all suspected persons and to call upon the secular arm to aid in their capture. The personnel of these judges came to be selected from the two mendicant orders. The preaching friars, or Dominicans, through the location of their early settlements and the personal character of their founder took the leading place in the new organization, but they divided their duties on a geographical basis with the Franciscans. Scandinavia was exempt from their activities and England, as will be shown, had no inquisitors other than the archbishops and their suffragans. Portugal did not receive the system till 1531.

The most threatening fourteenth century her-

esies prior to the spread of the doctrines of Wycliffe and Huss were the remains of Catharism in the south of France and the theories of the Waldensians, Beguines and pseudo-Apostles in northern Italy. In addition, the church was called upon to stamp out sorcery and witchcraft of various kinds and belief, such as that of Joan of Arc, in interior revelation from or communication or understanding with supernatural powers. The later Middle Ages witnessed the growth of heresy in two main directions: doctrines of internal illumination and extreme religious subjectivism, which are frequently the product of mystical enthusiasm; and the kindred notions, that of the absolute poverty of Christ—associated with the “spiritual” Franciscans—and that of clerical possessions as depending for their justification on the personal goodness of the possessor. The latter notion was the application to the clergy, particularly the religious orders, of Wycliffe’s doctrine that lordship is founded upon grace. To this the English Lollards and a large section of the unorthodox Bohemians added erroneous opinions on the sacrament of the Eucharist. But although sacramental heresy was serious it was not so dangerous as a false ecclesiology, the main error which the later mediæval church had to combat.

The method of procedure for inquisitors has been described by the Dominican Bernard Gui in the fifth part of his *Practica inquisitionis hereticæ pravitatis*, written in the early fourteenth century. The citation of the suspected person was made in his own house through the parish priest in the presence of witnesses and again on a Sunday or in certain cases on three consecutive Sundays or festivals. If the suspected person did not come within a year, the citation having been repeated, he was pronounced excommunicate. The alternative method of citation was the more stringent one of summary capture upon clerical request by the secular power. The inquisitor then interrogated the prisoner in the presence of two religious and a notary who took minutes of the questions and replies. There was no *hællus* presented as in ordinary canonical procedure. The inquisitor was instructed to make his inquiry simply and directly (*de plano*) and his powers were not subject to the territorial limits laid down in the thirty-seventh canon of the Fourth Lateran Council of 1215. No exemptions or appeals were permitted. Culpability was determined either by the confession of the victim under examination or by the evidence of witnesses, who for this purpose need not necessarily

be persons of unblemished character. Their depositions were communicated to the accused, but their names were kept secret and he was never confronted with them. Generally the inquisitor aimed at securing a personal confession, which might be effected by persuasion, accompanied where necessary by judiciously prolonged detention in prison.

In certain more obstinate cases the confession might be elicited by torture, as sanctioned by the bull *Ad extirpanda* of Innocent IV. The period when torture seems to have been most employed is the fifteenth century in the great campaigns against witchcraft undertaken in southern Germany and in the district of Arras. The bull of Innocent VIII *Summis desiderantes* (1484) shows that a reaction had been taking place in the upper Rhineland against the rigorous method of the inquisitors. In 1522 the humanist J. L. Vives in his edition of the *De civitate Dei*, when commenting upon the ninth book, speaks of the evils of torture, which men preferred to death.

The sentence required the cooperation of the ecclesiastical ordinary and was generally given in an assembly of secular and religious clergy reinforced by lawyers. It could always be revoked or modified except where the accused was left to the secular arm for death by burning; and even here repentance *in extremis*, provided that the accused was prepared to abjure sincerely and denounce his errors and former accomplices, would justify the lay court in returning him to the inquisitor, in which case his punishment would be perpetual imprisonment. The penalty of the stake could not, however, be mitigated in the case of a relapsed heretic, although he was allowed to receive the sacraments of penance and the Eucharist if he was converted at the end.

In the case of others the penalty might be imprisonment either in more or less open confines (*murus largus*) or else in rigorous and solitary imprisonment (*murus strictus*); the wearing of a distinct mark upon the dress to indicate the brand of heresy; or pilgrimages to the greater or smaller shrines of Christendom. In the last case annual visits were often prescribed and the penitent was enjoined to hear mass and sermon in the church which he was compelled to visit and to offer a candle to the celebrating priest, by whom he was solemnly fustigated before proclaiming his offenses aloud to the assembled congregation. In other instances pecuniary penalties were inflicted. In Languedoc severe cases frequently involved confiscation of goods and the destruction of the heretic's dwelling. Of the

property so confiscated part went to the ruler, part to the church. These confiscations constituted one reason why the pursuit of heresy was to the advantage of the state; but in any case the secular authority never scrupled to put the heretic to death. The use of the stake was made general throughout the Germanic empire by Frederick II in 1238; it became customary in France under St. Louis.

Although there was no inquisitor appointed by papal authority in England, the procedure, resting in the first instance in the hands of the bishops, followed not dissimilar lines. The practice as it developed after the papal condemnation of Wycliffe's heresy was that the bishop made inquiries and with the help of the secular arm, if necessary, seized and examined the suspected persons. Abjuration was made in the first instance before the bishop, who prescribed the penalty, frequently that of imprisonment. Particularly bad cases, where the accused persons continued their errors after abjuration or where they were condemned for disseminating Lollard opinions by means of books and writings, might be referred to convocation. About 1400 and thereafter, probably as a result of the determined influence of Archbishop Arundel, all the leading heretics were brought by their dioceses to the provincial synod. According to the procedure governing such cases articles were first "objected" to the defendant and his replies noted; after this there followed an examination conducted by a tribunal consisting of the archbishop and members of each of the mendicant orders representing theological interests and of trained lawyers representing legal interests; at the end there was rehearsal of the points established and an exhortation by the archbishop to the accused person to abjure. In the event of abjuration the penalty was fixed by the archbishop in convocation and generally took the form of a public recantation of error and of imprisonment until the heretic could find sufficient security for his good behavior. In cases of obstinate persistence convocation relinquished the accused to the secular arm. The state bound itself to assist the church in its pursuit of Lollardy both by putting the heretic to death (statute *De heretico comburendo* of 1401) and by cooperating through its local officials in the inquiry for heretics (statute of Leicester, 1414). In a serious case involving a man of high standing, like Sir John Oldcastle, the king himself tried to exercise his influence.

The sinister reputation acquired by the Holy

Office was probably due to the great powers given to the inquisitor, by the subtle distinctions employed in grading the suspected person and by the actual horror of the burnings. But it must be remembered that the inquisitor was frequently assisted by *virī periti*, lawyers who could keep a watch upon proceedings and who would certainly prevent serious injustice being done. Furthermore there is reason to believe that the number of relaxations to the secular arm was not great. The destruction of the suspect was by no means the purpose of the tribunal. The church did not desire the death of the sinner, and the inquisitor's object was to instruct and convince those in error of the truth of its doctrines. Less favorable interpretations derive largely from the rigorous conduct of individual inquisitors, like Conrad of Marburg and Conrad Tors in Germany or Torquemada and Lucero in Spain. In sixteenth century Italy the Inquisition became notorious for the examinations to which it subjected a number of illustrious men of science and letters. By this time, however, its main work in the suppression of heresy was done.

The adaptability of inquisition procedure to political ends was first revealed in the program of Philippe le Bel and his shrewd legist, Guillaume de Nogaret, in fourteenth century France, and later by the popes in their attempts to consolidate their temporal power in Italy. This adaptation was effected most thoroughly in Renaissance Spain, where the Inquisition was organized in close cooperation with the Spanish monarchy as a piece of state machinery, designed to exterminate antimonarchical groups, primarily Jews and Moors, and to establish both in Spain and throughout the Spanish empire in the New World a homogeneous population with a unified nationalistic outlook. The fact that these methods tended to contribute instead to the subsequent decline of Spanish enterprise may be attributed in part to the extreme severity with which they were applied at home and in the colonies.

E. F. JACOB

See: CHRISTIANITY; APOSTASY AND HERESY; INTOLERANCE; PERSECUTION; EXCOMMUNICATION; PILGRIMAGES.

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## INSANITY

CRIMINAL LAW. In criminal cases the problem of insanity must be considered in three respects: first, as to the capacity of an accused person to be tried; second, as to the sanity of an accused person at the time of his offense; third, as to the procedure following acquittal on the ground of insanity.

The legal problem of insanity before or during trial does not involve the issue of responsibility or irresponsibility, which is based on the condition of the accused at the time of the offense, but so-called present insanity, i.e. mental incapacity for trial. Under early English law as in modern Anglo-American a man who becomes insane before arraignment or during trial is not obliged to plead to the offense or to stand trial provided he meets certain criteria, such as that he has not such "mind and discretion" as would enable him to appreciate the charge against him and the proceedings thereon or that he is not sane enough to recall the events of his life and to present to counsel the facts which ought to be stated to the jury. At common law the question of capacity to be tried was customarily settled by a separate jury, occasionally by personal inspection by the judge. Today the method for determining the condition of the accused before or after indictment or during trial varies. In some American states the court has discretion as to the means of inquiry, in others lunacy proceedings in chancery must be instituted; in some a jury trial is necessary, in others there is inquiry by two or more qualified physicians or by a commission of doctors and lawyers.

The chief weaknesses of these provisions are that since the initiation of the proceedings is left to persons untrained in psychiatry it becomes largely a matter of chance whether the defendant will be examined mentally before or during trial, unless his symptoms are striking, and that when an examination does take place it is not

always made by skilled experts. In Massachusetts under a unique provision of a law of 1921 (as variously amended in minor details) this situation has been remedied. A psychiatric examination by experts of the Department of Mental Diseases is a routine provision for all persons indicted for a felony who have been previously convicted of a felony or indicted for any other offense more than once. The objects of the examination are to determine the mental condition of the accused at the time of the examination and "the existence of any mental disease or defect which would affect . . . criminal responsibility." The report of such examination is not admissible as evidence in a case that goes to trial, and each side may still call its own experts; but in practise the neutral nature of the examination is relied upon to a considerable extent by courts, prosecutors and defense counsel, and "battles of experts," which so often mar the procedure in other jurisdictions, have in Massachusetts become practically unknown.

The most important aspect of the law of criminal insanity relates to the conditions under which the mentally ill are exempt from criminal responsibility. Some attempts to define these conditions were made as far back as the time of the Roman law as a result of the influence of the Greek physicians. A rescript cited in the Digest of Justinian (*Dig.* 1, 18, 14) dealt with the problem. The rescript states that the insane are irresponsible because they have been punished enough through their infirmity, that persons who are mentally ill may have "lucid intervals," that lack of knowledge of what one is doing may be a criterion of irresponsible insanity. Even the Germanic law sources of the Middle Ages, as is apparent from the various mirrors, town laws and customs, recognized the criminal irresponsibility of the insane. The Romanistic writers reintroduced the idea of the lucid interval, but Farinacius states that the majority of them indulged a presumption that the offense was committed during the ordinary state of insanity.

Among English legal commentators Bracton, Fitzherbert, Staunderforde, Coke, Hale and Hawkins attempted in various ways to evolve precise tests of irresponsibility. These, however, hardly amount to more than scraps of opinion. The Roman influence is particularly marked in Bracton. In *Rex v. Arnold* (16 How. St. Tr., 695), decided in 1724, a remark of Bracton's that an insane person is *non multum distat a brutis* turned up as the "wild beast test"; in Hadfield's Case (27 How. St. Tr., 1281), decided in 1800,

the brilliant advocate Erskine disposed of the views of Coke and Hale in insisting that "delusion, where there is no frenzy or raving madness, is the true character of insanity."

The modern English law rests upon the famous M'Naghten Case (10 Clark & Fin., 200), decided in 1843, in which the rules of responsibility were crystallized in the well known answers of the judges of England to certain questions propounded by the House of Lords as the result of an unpopular acquittal of M'Naghten, a paranoiac who killed Sir Robert Peel's secretary. The judges said that "to establish a defence on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or, if he did know it, that he did not know he was doing what was wrong." This simple sounding "test" has in practise led to great confusion and difficulty of application; almost every phrase in the classic judicial utterance has been subjected to criticism from both a legal and a psychiatric point of view. The same is true of the further opinion of the judges in this case that a person who suffered from delusion might be liable to punishment if he knew that he was acting contrary to law.

Most American courts refuse to consider any criterion of the irresponsibility of the insane other than some local variation of the "nature-and-quality" or "right-and-wrong" test. In a number of jurisdictions, however, under the influence of both legal theory and medical attacks it has been held that irresponsibility may under certain conditions result from the presence of an "insane, irresistible impulse" even though knowledge of the nature and quality and wrongfulness of an act exists. The tests have been further complicated by the introduction in some American decisions of the element of delusion and its effect upon responsibility. The New Hampshire law expresses the doctrine that the question of irresponsibility by reason of insanity is altogether one of fact for the jury, since there is in truth no particular legal test which they must observe. Reviewing all the "symptoms, phases, or manifestations, of mental disease as legal tests of capacity to entertain a criminal intent," Judge Ladd in a well known case [*State v. Jones*, 50 N. H., 369, 398, 399 (1871)] concluded that "they are all clearly matters of evidence, to be weighed by the jury . . ."

In criticizing the tests of insanity it must be remembered that it has never been held that the mere existence of mental disease or defect in itself constitutes an exemption from criminal responsibility. One reason for this view is, as Kenny has said, that "lunatics are usually capable of being influenced by ordinary motives, such as the prospect of punishment; hence they usually plan their crimes with care, and take means to avoid detection" (*Outlines of Criminal Law*, p. 52). Nevertheless, a historical review of the subject indicates that the tests themselves, while remaining unchanged theoretically, have in practise gradually undergone modification not only to meet changing attitudes toward the objectives of punishment but to take account of refinements in medical knowledge.

The standard tests today proceed more or less upon the following assumptions, which are from the viewpoint of psychiatry questionable: first, that lack of knowledge of the "nature or quality" of an act (assuming the meaning of such terms to be clearly defined in the minds of juries and in judicial opinions), or incapacity to know right from wrong, is the sole or even the most important symptom of mental disorder; second, that such knowledge is the sole instigator and guide of conduct or at least the most important element therein and consequently should be the only criterion of responsibility when insanity is involved; and, third, that the capacity of knowing right from wrong can be completely intact and functioning perfectly even though a defendant is otherwise demonstrably of disordered mind.

The irresistible impulse test supplies in a measure the deficiencies of the knowledge tests; for it takes into account disturbances in the volitional inhibitory mode of mental life. It recognizes that although the disorder in the cognitive sphere may not be such as to prevent a defendant from having had some conception of the difference between right and wrong, he may nevertheless have been suffering from a deep seated mental disturbance which markedly affected his conduct. Emphasis of delusion as a test may be criticized in that it represents a singling out of but one symptom from a general disease pattern in the delusional mental disorders, a symptom which is not necessarily more important than the others.

All three concepts—knowledge, irresistible impulse and delusion—are subject to criticism as tests of irresponsibility because their employment neglects the fundamental theory of the

interdependence and interrelationship of mental processes; a disturbance in the cognitive, volitional or emotional sphere can hardly occur without affecting the personality as a whole and the conduct that flows from the personality. It could readily be shown that these outworn presuppositions may work injustice to offenders of various types of mental disorder, particularly those suffering from pronounced psychoneuroses, in whom unconscious motivation of conduct is believed to play a predominant role.

Several attempts have been made to remedy the situation. A distinguished legal and medical committee of the American Institute of Criminal Law and Criminology recommended in 1913 a test that was not really a test at all, for it was to the effect that no one should be held liable for a criminal act if his state of mind was such that he could not have had the necessary criminal intent—a proposition that is not of much practical value to a judge in charging a jury. A better attempt to overcome the dilemmas inherent in existing tests of irresponsibility was the earlier proposal of a committee of the New York State Bar Association, which in 1910 moved to abolish insanity as a defense to a charge of crime. This endeavor to eliminate the technicalities of the tests of irresponsibility at one stroke was accompanied by a provision that the court, if it believed the prisoner was insane or mentally defective at the time of the offense, might have an inquiry made and as the result thereof either impose the regular penalty or sentence him to confinement in an asylum for a term of years or life. Thus the effort was made to have the question of mental disorder considered, as certain criminologists feel it should be, not as a matter for the jury in its deliberations as to guilt or innocence but as a matter for the court aided by impartial experts in its deliberations as to sentence; this was essentially the principle behind a Washington statute which, not without room for doubt, was declared unconstitutional in *Strasburg v. State* [60 Washington, 106 (1910)] and a somewhat similar provision more recently invalidated in Mississippi [*Sinclair v. State*, 132 So., 581 (1931)].

While not much progress has been made with tests of insanity, it must be remembered that the consequences of conviction or acquittal on the ground of irresponsibility have in recent years been considerably modified in many jurisdictions. On the one hand, conviction today is not always or even often followed by the death penalty; on the other hand, acquittal frequently re-

sults in the defendant's commitment to a hospital for mental diseases instead of his release.

In the earliest English law insanity seems not to have operated as an acquittal, at least in murder, but to have resulted in a special verdict entitling the accused to a pardon. Subsequently in England and in a number of American jurisdictions if the accused was found irresponsible because of insanity he was not only acquitted but apparently no special order looking to his safety or to that of society was made. Under the English Criminal Lunatics Act of 1800 such a defendant was detained "during his Majesty's pleasure." In 1883 the Trial of Lunatics Act provided that upon an acquittal on the ground of insanity the jury should return a special verdict of "guilty, but insane," under which the acquitted person could be legally controlled by the home secretary. Under the Criminal Appeal Act of 1907 the Court of Criminal Appeal was empowered to quash the sentence of an appellant found guilty who was, however, in its opinion insane and to order the appellant to be confined as a "lunatic," as if a special verdict had been found under the 1883 act. The defendant is not released until the home secretary so decides.

In America practise varies. In one group of states the jury that acquits the defendant because of insane irresponsibility must state in one way or another whether it still regards him as insane; in other jurisdictions the jury must state whether it finds the defendant to be still dangerous; in several states the mental condition of the defendant at time of acquittal is determined by separate machinery.

The consequences of such findings vary. In a few states if the jury finds the defendant no longer insane or dangerous he is allowed to go free; in others when a jury acquits a person on the ground of insanity the statutes allow the trial court no discretion but to provide for his commitment with or without separate lunacy proceedings; in many states the court may, if it deems such a defendant dangerous, commit him to a hospital; in Massachusetts the court must order a defendant acquitted of murder or manslaughter because of insanity to be committed to a mental hospital "during his natural life."

A frequent remedy for release of persons incarcerated on the ground of irresponsibility is *habeas corpus*. The writ is used for this purpose in about a fourth of the states, while in the remainder special machinery for release is also provided. Whether the hearing on the return of the writ shall be with or without a jury also

varies from state to state; in some this matter is within the judge's discretion, in others within the petitioner's. In various states discharge from the hospital is within the discretion of the superintendent, commissioners of insanity, department of correction, trustees, special commission or a justice of the supreme court. In addition there exist of course the general provisions for commutation and pardon.

In recent years there has been an increasing demand for radical reorganization of the machinery of criminal justice. A plan has been frequently urged sharply to differentiate and specialize the two major processes of criminal justice—ascertainment of guilt and imposition of sentence. The decision as to the sentence, that is, the treatment of the offender found guilty, would in such a scheme be made by a tribunal specially qualified in the interpretation and evaluation of psychiatric, psychologic and sociologic data. The treatment originally imposed would be modifiable from time to time in the light of scientific reports of progress or retrogression of the offender. Certain procedural safeguards would protect him from possible arbitrary action on the part of the tribunal. A completely indeterminate sentence law, or at least one giving the tribunal wide administrative discretion as to the duration of the sentence, is an indispensable adjunct to such a system, as is also a scientifically manned clearing house and laboratory where offenders awaiting sentence would be given thorough observation and study. Finally, for the system to operate efficiently a thorough overhauling of existing treatment practises—probation, various forms of imprisonment, parole—would be necessary and there would have to be continuous experiments with new correctional and educative instruments. The result of this outlined system would be practically to eliminate the need of the cumbersome and unscientific defense of insanity, since the offender would as a matter of routine procedure be assured appropriate treatment regardless of whether or not the defense was resorted to. The clumsy device built up by the law for taking mental pathology into account in the determination of criminal responsibility would gradually become atrophied.

The continental law and practise with regard to criminal insanity are not significantly different from the Anglo-American. According to the German criminal code of 1871, "there is no punishable act, if at the time of its commission the actor was in a state of unconsciousness or of

marked disturbance of the mental faculties which excluded the free determination of his will." The French penal code of 1810 stipulates that "there is neither crime nor offense if the accused was in a state of mental alienation at the time of doing the act, or if he was constrained by a force which he could not resist." Generally the European codes take account of both the cognitive and the volitional elements in behavior and are broad enough to allow the trier of fact considerable scope for introducing "the human element in justice" in cases in which popular sympathy is with the accused. While the continental tests are subject to some of the same criticisms as Anglo-American tests, it should be noticed that the business of securing expert testimony is generally managed more rationally in European courts. Some European codes provide for "partial responsibility" and corresponding mitigation of punishment, but this is not true of the German or the French code. It is doubtless, however, possible for partial responsibility to be taken into account as an "extenuating circumstance." Most European codes also provide for measures of security against a person acquitted on the ground of insanity, but the provisions vary considerably.

SHELDON GLUECK

**CIVIL LAW.** In the civil law as in the criminal law mental incompetency of an individual leads to the extinction or diminution of his legal capacity to act and of his legal responsibility for his acts. The protection given the mentally incompetent in modern systems of law is limited by the protection accorded innocent persons who deal with him, hence the emphasis is placed upon preventive measures such as guardianship. The primitive superstition that the insane person was accused by the gods or seized by evil spirits left no trace upon Roman private law, which as early as the Twelve Tables designated a familial curator for the *furius*, a lunatic who might or might not have lucid intervals, and an officially appointed guardian for other mental incompetents (*mente capti, insani*). The Roman law system has been adapted in modern European codes to a wider range of mental incompetency. Thus Germany and Switzerland have extended guardianship not only to prodigality, which was recognized in Roman law, but also to dipsomania and mental weakness, and the French civil code authorizes in case of prodigality or mental weakness the appointment of a judicial counselor whose consent is necessary to the

validity of certain types of transactions. A similar expansion of the concept of civil insanity as a ground for the appointment of a guardian has occurred in many Anglo-American jurisdictions, which by statute or judicial construction authorize the appointment of a guardian for a spendthrift, a habitual drunkard or even for a person likely to be imposed upon. Drug addicts are also frequently included. California and England are among the jurisdictions which have apparently gone furthest in this respect, while New York adheres more nearly to the narrower conception of early English law. In the latter system the king's prerogative of acting as guardian of the person and property of the mentally incompetent, however mercenary in its origin, came to be based upon the humanitarian conception that the king was *parens patriae*. To the lord chancellor was delegated at an early date the royal power to appoint guardians, and this function thus became a part of the jurisdiction of the Court of Chancery. In the United States courts of equity jurisdiction, adapting the powers of the English court, have ordinarily taken over this function, although by statute it has sometimes been conferred upon probate courts which have jurisdiction of decedents' estates.

While English and American judicial reports deal with many varieties of mental abnormality, legal tests of sanity do not conform to standards recognized by abnormal psychologists with educational or clinical objectives in view. The law has striven to establish flexible standards of incompetency. To deprive a man of his civil capacity or to relieve him of his civil responsibility to others calls for a more pronounced degree of mental abnormality (to say nothing of differences in type) than is requisite where the decision involves only specialized educational or clinical treatment. Other factors which have tended to maintain a relatively low legal standard of sanity are the emphasis upon freedom of alienation, judicial acceptance of the theory that mental faculties operate independently of one another and trial by jury. The frequency with which decisions of lower courts are reversed on appeal indicates the uncertainty of the legal standard.

Legal proceedings involving a determination of mental incompetency may be grouped into two main classes: preventive and restitutive. In the first group the issue is the competency of the individual for future conduct; in the second it is competency for a particular act already consummated, such as a conveyance, contract, will or

tor. In the former belongs the statutory proceeding to commit an insane person to a public or private institution for treatment and for confinement in the interests of the individual as well as of his relatives and the public. Although it resembles a criminal prosecution it is usually denominated a civil proceeding.

No person may be permanently restrained against his will except by due process of law. The safeguards of ordinary contentious litigation, designed for mentally competent litigants, are here inadequate; hence other safeguards are provided. The class of persons who may petition for commitment is restricted to near relatives or a public official, and in many jurisdictions the petition must be accompanied by the certificates of two qualified physicians. Notice must be given to the person alleged to be insane or to his near relatives, and a hearing is required. While trial by jury is not constitutionally requisite, in some states it may be demanded as of right and in others it is discretionary. Since propensity to do injury is the test in such proceedings, commitment does not preclude a finding that the individual remains competent for business transactions.

The other type of preventive proceeding is the appointment of a guardian (also called a committee, conservator or the like) of the property and person of an insane person. The test of sanity as usually formulated is a person's competency to manage himself or his affairs. The law thus emphasizes the intellectual process rather than the emotional basis of conduct. Yet in some jurisdictions the concept of incompetency is broad enough to include the emotional instability of old age and extreme susceptibility to imposition in business dealings. Lack of ordinary business judgment is not incompetency. The courts have felt that the denial of contractual freedom to a large portion of the adult population would seriously hamper economic intercourse. While guardianship of the person alone is still permissible, the proceeding is seldom resorted to where no property is at stake. The procedural safeguards in proceedings for the appointment of a guardian are much the same as in commitment proceedings, save that a jury trial is more commonly required. Unlike the Roman law, which effaced the juristic personality of an incompetent under guardianship (save during a lucid interval), American law limits the incapacity created by a judicial determination of insanity. The older doctrine that the contracts, conveyances and transactions of an incompetent

under guardianship were absolutely void has been shaken by more recent decisions holding that the appointment of a guardian merely raises a presumption of insanity, which may be rebutted by proving restoration of sanity and practical cessation of the guardianship. Notice of the guardianship is imputed to all persons dealing with the lunatic on the theory that the proceeding is one in rem.

The validity of a contract, conveyance, gift or other transaction may be questioned in a suit or by way of defense by the incompetent or his guardian or after his death by his heirs or representatives to set aside the transaction and obtain restitution of the status quo. Such a suit or defense may be maintained even though no prior adjudication of insanity has taken place. The test of competency is ability to understand the nature and consequences of the particular transaction at the time when it took place. The restitutive adjudication may seriously impair the interests of third parties, and the reported decisions show a tendency to apply a lower standard than would be applied in a guardianship inquiry. The policy of maintaining freedom of alienation excludes in most jurisdictions the mental weakness of old age and delusions on subjects not connected with the particular transaction. Transactions during a lucid interval are upheld, even though the individual has been confined to an asylum or has been suffering from delusions on unrelated subjects. Some courts, however, have set aside transfers of property because motivated by insane delusions, such as delusions of persecution [Riggs v. American Tract Society, 95 N. Y. 503 (1884)], thus shifting the emphasis from the intellectual to the emotional basis.

In most American jurisdictions transactions of insane persons are treated as "voidable" rather than "void." The legal consequences of this doctrine are that restitution of benefits received by the lunatic (or at least of those retained by him) is a prerequisite of his regaining that which he parted with, that innocent purchasers from the donee or the vendee are fully protected, that ratification after restoration to sanity validates the transaction and that the suit to regain land is tried in a juryless equity court. While very few American courts have gone as far as the more recent English decisions in enforcing the transactions of an incompetent in favor of a person who deals directly with him in actual ignorance of the insanity, the requirement of restitution often attains the same result by indirection. The



low standard of competency, excluding mental weakness or old age, is eked out by the Anglo-American doctrine of "undue influence," which permits cancellation of a conveyance or gift by a weak minded person to a domineering relative or confidant who by deception, threat or insistent suggestion knowingly took advantage of the other's weakness. Many of the undue influence cases involve controversies over the effects of senile dementia [McGregor v. Keun, 330 Ill. 106, 161 N. E. 99 (1928)].

Competency to execute a will may be determined in a contest over the probate of the will, in which trial by jury is the rule. The standard of competency is even lower than in transactions *inter vivos* because of the policy of upholding testamentary dispositions, especially where those persons are favored whom the court or jury regards as the natural objects of the testator's bounty. Some courts avowedly test the rationality of the testator partly by reference to the rationality of his testament. The mores of a testator's duties to his relatives thus exert influence under this guise.

An insane person, even one previously adjudicated to be incompetent, is civilly liable for his tortious injuries to the person or property of others. Although English law balks at imposing liability on one who did not understand the nature of his act, American courts award compensation to the injured person, partly in order to induce the lunatic's relatives to confine him and partly in order to discourage simulation. The ancient contention that the lunatic has no will ("Furiosi . . . nulla voluntas est," *Dig. L.*, 17, 40) has not sufficed to protect him from liability for some wilful torts, such as assault and battery or defamation (on which authorities are divided), but has precluded liability for malicious prosecution and for punitive damages in any event. An insane person although not bound by his contracts is liable in quasi-contract to pay the reasonable value of necessities furnished him, for without the ability to obtain credit he would be left destitute.

Two standards of mental incompetency have struggled for recognition in the Anglo-American law of marriage. A marriage has been treated as the making of a civil bargain which can be annulled only upon proof that one of the parties was then incapable of understanding the immediate incidents of the relation; hence such ailments as feeble-mindedness, epilepsy, kleptomania and delusions are generally not grounds for annulment. Yet the eugenic standard of com-

petency has steadily gained recognition through legislation prohibiting the marriage of epileptics and others who though capable of understanding the legal consequences of a marriage are unfitted for its biological and social functions. The new standard is also recognized in judicial decisions [Gould v. Gould, 78 Conn. 242 (1905)] decreeing annulment or divorce on the authority of these statutes, although many of them are so loosely drafted as to be ineffective. Supervening insanity prolonged and incurable is a ground for divorce in a growing minority of American states: Alabama, Colorado, Connecticut, Idaho, Kansas, Minnesota, Nevada, North Dakota, Oregon, South Dakota, Utah, Vermont and Washington. Mental incompetency is also a disqualification for the acquisition of citizenship, for voting, for jury service and for holding public office.

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*See:* CRIMINAL LAW; CRIMINOLOGY; PRISON REFORM; HOMICIDE; INTENT, CRIMINAL; PUNISHMENT; GUARDIANSHIP; ALIENIST; EXPERT TESTIMONY; PSYCHIATRY; MENTAL DISEASES.

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INSPECTION. Inspection of commodities, buildings, industrial processes, trade practises and other phases of modern civilization by special employees of the government is merely one phase of law enforcement, conspicuous because governmental activity has penetrated into fields where common knowledge and chance report no longer furnish adequate information. In the collection of revenues, in which governments are always vitally interested, inspectors of a sort have been employed for as many centuries as customs, tolls, tributes and taxes have been exacted. Inspection and other aspects of enforcement are not in fact separable, for although in some instances inspectors merely publish their findings and the publicity itself acts as a corrective to illegal or undesirable practises, in others they are charged with the double duty of reporting infractions of the law and of bringing offenders to justice.

Supervision of commodities and of market practises by civil authorities is as ancient as the records. It was undertaken in Egypt, China, Greece and Rome. Mediaeval town authorities and later the wardens of craft guilds made particularly notable efforts to establish and uphold standards of quality, price and weight. The character of the supervision—inquiry into the accuracy of weights and measures or insistence that the producer place his mark upon the wares—as well as the severe punishments meted out to bakers whose bread was short in weight, to farmers who filled sacks with poor grain and sprinkled a little good grain at the top, to metal workers who used debased material in their wares, indicates the gravity of the offense of cheating. These regulations, like those of modern chambers of commerce and better business bureaus, protected not only the consumer but the business of more reputable interests against encroachment from less reputable. And although this supervision may often have been thought of as a desirable restriction of trade, it is clear that it must sometimes have been considered constructive promotion. Towns became important as trading centers; town officials would therefore wish to encourage legitimate trade. And as the records suggest that in proportion to the number

of sales cheating was extremely common, the mediaeval authorities met the situation by building up a body of specific regulations. Only when makers and sellers discovered that greater satisfaction of consumers' wants meant increased business did the early supervision and inspection by local authorities tend to become unnecessary and even troublesome. The growth in the volume of trade made the national governments which emerged in the following centuries increasingly aware of their dependence upon a sound economic life. In both England and France there were movements to nationalize the regulations protecting the quality of commodities, although the machinery for inspection remained local, exercised by wardens of crafts, clerks of the markets or special inspectors appointed by local justices. In France, where failure to develop large shipping interests made for greater dependence upon small but stable markets, high standards of production were insisted upon much longer than in England, where constant access to new markets opened up by explorers and traders soon shifted the emphasis from quality to quantity. The laissez faire movement matured there as a protest against the mass of restrictions and regulations which penalized producers and traders and impeded the expansion of competition based on rapidly changing methods of production. In country after country government supervision, which was by tradition specific and hence in a changing society restrictive, became less noticeably part of the economic life. But inspection was of course never completely abandoned. Even in America, where production took its own course more freely than elsewhere, certain standards were always insisted upon. The *Journal* of the New York state assembly for 1828, for instance, contains annual reports (submitted in accordance with statute) from inspectors in the cities of New York and Albany of fish, flour, sole leather, staves and heading, liver oil, potash and pearlsh and lumber. Four standard grades of pine boards are listed in the report.

Now that quantity production has given rise to world wide competition for markets, uniform quality to insure liquidity has again become vital for the producing interests. Goods must be equally salable in Europe or South America, in six months' time or on twenty-four hours' notice. To a very great extent private interests in industry and commerce have brought about such uniformity as now exists—the machine technology is indeed responsible for much of

it—but here as elsewhere government has been pressed into service to control situations which private interest could not or would not supervise itself. Thus today there exist official inspection and grading of a wide variety of commodities for the domestic market or for export—grains, fruits, vegetables, dairy products, meat, ice, silk and so on through a long list. In recent years governments have somewhat increased their supervision over the conditions of fair competition through such organizations as the Federal Trade Commission in the United States. The use of unfair (substandard) marketing methods is discouraged not by systematic inspection but by special investigation of particular abuses in behalf of honest competitors, and legal proceedings are dropped against offenders who agree to desist.

The increasing complications of industrial society have led to governmental regulation of less tangible commodities. National banks are subject to inspection as part of the currency system; state banks and trust companies on the ground that they are of basic importance to the whole economic life. The extension of state activity to protect the savings of low income groups through supervision of savings bank investments, through regulation of building and loan associations and insurance companies and through the administration of blue sky laws is more definitely a limitation of private enterprise in the interest of certain classes of consumers. In the case of public utilities regulation of rates and services and of financial structure is justified on the legal ground that these industries are affected with a public interest. Supervision is accomplished by the requirement of standard accounting practices and similar devices for minimizing the work of inspectors rather than by positive control of operations. Logically, however, the suppression of fraud, the elimination of undue risk, the prohibition of undesirable trade practices and even such things as the age old supervision of weights and measures are simply necessary stages in the promotion of good business through the promotion of confidence.

Police power in its broadest sense—that is to say, the power of a state to act in the interests of the whole public and including, for example, the commerce power of the federal government of the United States—provides in theory the necessary authority for many types of regulation. But the most conspicuous exercise of police power in the modern state has come about through activities in behalf of public health, morals and safety.

The suppression of crime and the use of special officers of inspection for that purpose need no specific mention. Supervision of public health and safety is more characteristic of the modern age. A series of government functions were initiated by the humanitarian protestants against the abuses of the industrial revolution. Limitations on child labor in factories began in England early in the century; the act of 1833 (3 and 4 Will. IV, c. 103) stands out as the first factory legislation in any country to provide for national inspectors. On the continent governments interested themselves first in conditions of work, in special industrial hazards presented by the use of machinery and steam boilers and in safety appliances and only later in hours and wages of labor. Compulsory education and official interest in tenement house problems followed. Some pressure for housing reform in England came from overseers of the poor, but in regard to working conditions public opinion was only aroused to legislative action when strikes and drafts had called attention to the potential threat of poverty to the health and decency of the whole public.

Health services and regulations have grown most rapidly since the turn of the present century. The ancient standards of sanitation and building construction had disappeared in the dark ages. And even before scientists knew how diseases could be transmitted through polluted water supplies, communities again became aware of the need for pure water and were active in supplying it. When fires swept away towns, building and safety regulations were instituted. Other reforms followed. Meat, milk, food and drug, seed and fertilizer inspection; plant quarantines; periodic water analysis; smoke and light tests; sanitary inspection of bakeries, food factories, beauty parlors, dwelling houses and industrial plants; supervision of the manufacture of biological preparations; health examinations of school children and immigrants; enforcement of minimum standards of light and air in schools, homes and places of work; regulation of the use of fire apparatus and safety devices; inspection of elevators, ships, motor vehicles, airplanes and other dangerous inventions, these are only a few of the services instituted by governments, central or local, in the interest of public health or public safety. No adequate explanation can be offered of why the complete list of government inspection services includes the particular items which it does. Long as it is, it could obviously be much longer. The need for assistance in behalf of pub-

lic safety is felt more acutely than other needs, perhaps because dangerous technological inventions are more visible than changes in the distribution of industrial and financial power. Yet even here it would be difficult to say whether supervision had kept pace with the increase of danger. Regulation in behalf of consumers may have been retarded because of opposition by special business interests, or because public opinion has been so steeped in the doctrine that the promotion of good business is the promotion of the general good that it has not thought to notice how the people were faring. A great variety of influences have been at work and no single formula can describe them.

Growing up piecemeal, the administration of inspection services shows even more diversity than do the codes which they enforce. In every modern country there is some conflict of jurisdiction between local and central authorities. Inspection services traditionally in the hands of local authorities sometimes remain there after state or national laws are passed. In Germany the standards created by factory acts are national but factory inspection is left to the states. In the United States the health and safety standards themselves differ from state to state. Convenience of administration is sometimes sacrificed to tradition in these matters. In certain fields, however, as in building, the problem of control is essentially local, and city building and sanitary codes and inspection services frequently supersede the less rigid state requirements. As inspection grows more technical, division along functional lines is often made. Factory boiler inspectors cannot be charged with enforcement of the sanitary code, nor inspectors of electrical equipment with concern over the ages of child workers. Where inspection requires sampling and laboratory analysis, the field work may be in the hands of one group, technical work in those of another, while a third set of people concern themselves with the legal processes involved in enforcement. Different departments of a government may supervise precisely similar processes. The inspection in the United States of manufacturing establishments preparing biological medical materials for human consumption is the concern of the Public Health Service in the Treasury Department, and the inspection of such establishments preparing equivalent materials for use in animal diseases is the concern of the Department of Agriculture. Factory inspection in England is separate from mine inspection and from department store inspection, although

hours of labor and working conditions are the concern of each.

In effectiveness inspection services differ considerably. Even where statutes are relatively simple and specific and their enforcement somewhat removed from political and commercial pressure, there may still be difficulty in securing adequate personnel. Civil servants in Europe enjoy a prestige which is largely lacking in the United States and in consequence European factory inspection has been of higher grade than American. On the other hand, European trade unions maintain that their interests would be better served if workers received some of the higher appointments now reserved for experts. Inspection can rarely be either continuous or complete. Accordingly it will be most effective when enforcing such codes as building regulations, where one visit can certify lasting compliance with the laws, or when applied to such commodities as grain, where the smallest sampling will be representative of the whole. It will be least effective where conditions are so fluid that they can be altered or concealed while inspection takes place, a factor which for a long time made industrial inspection powerless and which still impedes banking and utility supervision. But even the most effective inspection may prove impotent when penalties for violation are incommensurate with the pecuniary gain.

The problem of administrative standards is fundamental. A striking difference between contemporary state regulations and those of post-mediaeval days is the large measure of administrative discretion now needed. Swift advances in knowledge of what constitutes purity in food or water or safety in transportation or construction make a large degree of elasticity in enforcement imperative. Furthermore modern legislators can seldom sift expert evidence sufficiently to be able to draft effective laws of the more specific type. Where standards are largely lacking, as, for example, in the case of biologicals, the government has been obliged to experiment in order to standardize materials. Safety standards in the United States are developed and assisted in operation by the Bureau of Mines, the Interstate Commerce Commission, the Bureau of Standards and the Public Health Service, by the various departments in all the separate states and by an almost indefinite number of trade associations, engineering societies and other private organizations exercising some degree of authority or control. The policing of standards already established may in such cases become less impor-

tant than activities leading to the formulation of new standards, and this has been the aim of European factory inspection. Even in the United States, where there is a strict theoretical separation of legislative, executive and judicial functions, it may conceivably happen that inspection activities, undertaken originally for purposes of enforcement, will furnish the necessary data for important and unheralded reforms. The widespread banking failures occurring in spite of supervision illustrate the weakness of a purely negative policy.

Inspection by the government in so far as it merely supplements the work of private interests is thus undertaken in a somewhat accidental number of unrelated fields as an aid to business and as a protection to the public. Essentially the same function is performed almost universally by industry itself. Every producer has his products "inspected" at some stage of the process, although the standards for acceptance or rejection may be extremely variable. Even public health and public safety are protected to a degree by inspections conducted by insurance companies, whose standards may be higher than the government minima. Whether or not government inspection services continue to increase in importance and elaborateness depends primarily upon how far the movement toward commercial standardization can go. Industries may succeed in imposing standards upon themselves without government intervention, as the cooperative marketing associations have already done. And, conversely, if all industry should be conducted by government, inspection as a separate and conspicuous phenomenon might disappear. Or the general enforcement of standards might even become a function of supreme control, as it has in Soviet Russia, where the Workers' and Peasants' Inspection checks the activities of other branches of the government.

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See: GOVERNMENT REGULATION OF INDUSTRY; BUSINESS, GOVERNMENT SERVICES FOR; CONSUMER PROTECTION; FOOD AND DRUG REGULATION; ADULTERATION; LABOR LEGISLATION AND LAW; BUILDING REGULATIONS; PUBLIC HEALTH; SANITATION; LICENSING; GRADING; STANDARDIZATION; LAW ENFORCEMENT.

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INSTALMENT SELLING. An instalment sale, aside from a cash or down payment, is simply a credit or deferred payment transaction in contrast with a cash payment and does not differ in its nature from any other credit transaction. Instalment credit provides for the payment of goods in fixed instalments at stated intervals and in this respect it is a sort of funded debt in contrast with a demand obligation, which is payable at the request of the creditor, or the old fashioned book credit, which was payable in whole or in parts at the convenience of the debtor. It also stands in contrast with the kind of debt which runs for a stated period and which is to be paid in a lump sum at the end of the period. Instalment credit is protected by the commodity sold and is on the whole limited to goods with a resale value. The sales are usually conditional; the goods are delivered to the buyer, but the seller retains control over them; either the title remains in the seller and does not pass to the buyer until all the instalments are paid or the title passes immediately to the buyer and a chattel mortgage is given on the goods as security for the balance due. Default in payment usually gives the seller the right to repossess the goods; it also quite frequently forfeits all previously paid instalments.

Instalment buying is an old practise; it existed in ancient Rome, where houses were sold on time payments. But the practise did not assume importance until the period of capitalist production for widespread markets; it developed real significance only in industrialized countries during the nineteenth century and came increasingly into use in spite of a measure of disrepute attaching to it. As early as 125 years ago a furniture house in New York City was selling goods on time payments. Building and loan associations, which provide for the buying of houses on this plan, have been in existence for more than seventy-five years. The Singer Sewing Machine

Company has been doing a very profitable instalment business since 1856. There are also numerous piano and other musical instrument houses that have been selling in this way for the same length of time. McCormick reapers and binders have been sold on instalments almost from the beginning of their use. Books have probably been sold on time for a longer period than any of the commodities mentioned; all encyclopaedias, beginning with *Chambers's Encyclopaedia*, which appeared about 1750, have been sold on instalments. An extensive indirect form of instalment selling was the "credit check" system. The customer bought from organizations carrying on this kind of business a credit check for which he made a down payment and agreed to pay the balance at stated periods; the check was then used to buy goods (except food) at specified stores. The credit check system still prevails in England and Germany; in Australia the system, known as cash orders, flourishes alongside instalment selling.

Even though instalment selling similar to that which exists at the present time has been a common practise for the past fifty years or more, the growth of the system was not great until the last fifteen years, when it experienced an enormous expansion in both volume of sales and number of industries affected. About 1915 instalment selling was introduced into the automobile business in the United States, where it had a somewhat gradual growth for several years; after 1919 it suddenly expanded, reaching great volumes within a few years' time. In the industrial depression of 1920-21 the system spread to other lines of business and grew rapidly to large proportions.

Exclusive of houses, which are widely sold on instalments, it is variously estimated that from five to seven billion dollars' worth of goods were being thus sold at retail annually prior to the beginning of the depression in 1929. According to the Department of Commerce retail sales in the United States in 1929 amounted to \$50,000,000,000. On the basis of an estimate of \$6,000,000,000, instalment sales composed 12 percent of retail sales. It is commonly estimated that the amount of instalment debt outstanding at a given time was from \$2,225,000,000 to \$2,500,000,000, which is a more significant figure than the total of instalment sales over a period of one year's time. More than half the instalment debt outstanding is for automobiles; the next most important items are furniture, radios, clothing and sewing machines. It is estimated that 70 percent

of automobiles with respect to value is sold on instalments; 70 percent of household furniture; 80 percent of pianos; 80 percent of phonographs; 75 percent of radio sets; 90 percent of washing machines; 85 percent of vacuum cleaners; 90 percent of sewing machines; 70 percent of gas stoves; 90 percent of mechanical refrigerators; and 25 percent of jewelry. In 1927 approximately 27 percent of tractors and other farm machinery was sold on instalments (approximately \$100,000,000). In recent years there has been a considerable increase in instalment sales of clothing and jewelry. Instalment selling has been used in the sale of stocks and bonds, but apparently not with any great success.

Instalment selling in the United States is overwhelmingly in the form of conditional sales. Legal regulation of these sales varies from state to state; in a number of states the seller cannot retain title to goods sold on time and such conditional sales are not recognized as valid legally against third parties. There is agitation for the enactment of similar laws in other states. In the event the buyer defaults his payments the seller generally has three recourses: he may sue to recover the purchase price, he may foreclose the mortgage or he may repossess the commodity. Definite regulations are provided for in the Uniform Conditional Sale Act adopted in many states; the seller, for instance, may repossess but he must give the buyer at least twenty days' notice, if the buyer does not meet his obligations, the commodity is repossessed and sold at public auction. Efforts are being made to secure uniform laws governing instalment sales; meanwhile the National Association of Finance Companies is trying to standardize selling practises.

Instalment buying in England is known as "hire purchase" and has been in use for many years in various branches of the furniture trade. In this form of sale the owner agrees to rent the article to the hirer or lessee (in reality the purchaser) for a stated period and stipulates a certain number of instalments for rent; after the last one the lessee has the option of purchasing the article for a nominal sum, possibly no additional sum at all. The hire purchase system has made great strides since 1922, stimulated by overproduction in certain lines of trade and by the business slump. According to the Hire Traders' Protective Association instalment sales in 1927 accounted for 50 to 80 percent of the sales of automobiles; 70 percent of sewing machines, phonographs and pianos; 50 percent of furniture; and 10 percent of jewelry. Considerable

concentration prevails; a few large London firms with stores in various provincial towns do most of the business in instalment furniture.

French law recognizes a form of conditional sale, known as *vente à tempérament*, in which the title passes to the buyer. The seller cannot retain title to the article sold nor can he repossess it if the buyer defaults payment; the seller must sue in the courts. This legal restriction compels the instalment seller to be unusually careful in granting credit and eliminates much high pressure selling. Yet instalment selling is widespread in France; from 50 to 75 percent of motor cars are sold on time.

In Germany instalment selling under which title to the property remains vested with the vender has become increasingly popular in recent years. It almost disappeared during the inflation period but has since acquired a volume approaching in relative magnitude that of the United States. Approximately 75 percent of automobiles and furniture is sold on instalments. A considerable quantity of agricultural machinery is sold on time, one finance company devoting itself exclusively to that field. Banks participate directly in the capital and management of many instalment finance companies.

Instalment selling is found in almost all other countries; it has recently made considerable progress in the Balkans, Latin America and Japan. In all of these countries the articles sold on instalments consist mainly of furniture, automobiles, sewing machines, bicycles and musical instruments; they do not include, owing to different standards of living, some of the articles most commonly bought on instalments in the United States, such as electric washers, vacuum cleaners and electric refrigerators; nor are clothing and jewelry included to any large extent. Instalment selling in Europe and Latin America has been greatly stimulated by the sale of American automobiles abroad, a large proportion of which are sold on terms similar to those used in the United States. In Europe the proportion of automobiles sold on time payments averaged 61 percent in 1927-28, ranging from 15 percent in Spain to 80 percent in Denmark.

The recent expansion of instalment selling in the United States originated in developments in the automobile business. In the beginning of the industry manufacturers sold all cars at wholesale strictly for cash and urged retailers also to sell for cash. In time, however, through a desire to increase sales (emphasized by a great increase in plant capacity) the manufacturers changed their

attitude in regard to the granting of credit by the retailer to the consumer. The easy terms which were finally granted to the consumer increased sales and output; this coincided with an immense increase in productive efficiency, and the combination of these factors produced lower prices. These in turn increased sales and output, bringing about a still further expansion of plant and equipment. This expansion of plant capacity exceeded the capacity of available markets to absorb new cars, leading to an increase of both competition and instalment selling. Thus the automobile business developed the instalment system to a degree that made its former efforts seem comparatively insignificant. By 1923, however, the increase in automobile instalment sales slowed down considerably; and the finance companies sought new business in other fields, thereby becoming an important factor in the spread of instalment selling.

Other fields of business were prepared for instalment selling by poor sales and excess productive capacity during the depression of 1920-21. In the years just prior to 1920 plant and equipment had been expanded in the hope of great profits which were possible in the period of rapidly rising prices; and when the depression came some of these industries burdened with large overhead costs profited by the experience of the automobile industry and resorted to easy terms to the consumer as a means of increasing sales. The upsurge of prosperity in 1923 again increased plant capacity and competition; instalment selling spread. Following this period new products such as radios and electric refrigerators were seldom sold for cash; while instalment sales slackened in the case of automobiles and were stationary in the case of pianos they increased over 200 percent in the case of radios.

Competition among those selling the same kind of goods is a causal factor in the growth of instalment sales. If partial payment selling in a certain line of business stimulates sales and is otherwise successful, the manufacturer or retailer who refuses to use this device suffers. Under a regime of competitive business whatever is generally advantageous becomes a necessity for all competitors. Competition first forced the granting of instalment credit and then the offering of easier credit conditions in smaller down payments and a longer time in which to pay the balance. The tendency in some instances to depart from standard conservative terms may also be attributed to competition among retailers engaged in the same kind of business, among

manufacturers producing the same commodity and among finance companies and banks for business in lending funds to finance instalment sales.

Another factor in the spread of instalment selling is the competition between different kinds of goods, the type of competition which was intensified in the period from 1922 to 1929. It is believed generally that the public would purchase fewer radios, automobiles, mechanical refrigerators and the like if it were obliged to pay for them in a lump sum; and that consequently the purchasing power now expended on these commodities would, unless it were saved, be diverted to the purchase and consumption of other commodities. If the individual pledges his future income for automobiles, pianos and vacuum cleaners he will buy less clothing, food or the like than he would otherwise unless he is able to increase his income under the stimulus of instalment debts. In the opinion of many observers this latter condition is possible only in isolated cases and within narrow limits; consequently one of the effects of the increase in instalment selling has been a diversion of purchasing power from one group of goods to another. Instalment selling tends to slow down the sales of goods which cannot be sold on time payments; at the same time, however, it tends to induce consumers to purchase durable rather than ephemeral goods.

Modern methods of advertising and high pressure salesmanship produced by the intensification of competition have been partly responsible for the extension of instalment selling. Instalment goods are among the most heavily advertised, and this advertising is an important factor in the diversion of purchasing power facilitated by instalment selling. Advertising and instalment selling combine to determine wants by increasing the prestige and popularity of certain wants as against others.

When considered from the side of the demand for goods on instalment terms a very real factor in the instalment movement is to be found in the increase of the income of the wage earning and salaried groups. In recent years the middle class has increased in both numbers and income to a greater extent than any other section of the population; real wages have increased over 25 percent in comparison with pre-war wages and there has been a similar increase in the salaries of clerical employees. The larger part of these gains in income were secured during the period from 1920 to 1925, the very time in which instal-

ment buying assumed large proportions. The increased income meant that people could buy, pay for and consume more than formerly on any terms of sale and undoubtedly helped to stimulate the growth of instalment selling. Other forms of merchandising, however, such as mail order and cash and carry purchases, also greatly increased during the years of rapid growth of instalment selling. Credit facilities hitherto unavailable were offered to consumers through the development of finance companies, and the increased real income of the consumers gave them more than sufficient purchasing power to meet all their instalment obligations as they came due.

Before the recent expansion of the system buying on the instalment plan, except in the case of houses, was practised almost entirely by the poor and by the unstable groups in the community. Losses to the dealers were great, and consequently the price charged for the credit was so high that only those who could not possibly make other arrangements bought on instalments. Up until about fifteen years ago there was strong social disapproval of the practise and there is still a certain stigma attached to some types of instalment buying. It is only within the last ten years that the practise has become generally respectable.

At the present time instalment buying is not confined to the poorer classes. All economic groups except the very rich practise it extensively. Stores with a high class clientele sell furniture on instalments. Seven or eight years ago higher priced automobiles were sold on time payments only very quietly, but for the last few years they have been sold in the same manner and under the same conditions as cheaper cars. Electric refrigerators, too expensive to be bought by the poor, are sold largely on an instalment basis. While the largest number of instalment buyers is still to be found among the lower income groups, the total value of their purchases is probably less than that of the other groups; in fact, the great sources of instalment buying are probably among the middle class and upper layers of skilled workers. Nor is instalment selling confined to any particular section or sections of the country; it is well established everywhere, in both urban and rural districts.

One of the effects of instalment buying has been the creation of a new middleman, the finance company, the business of which has grown to great size within a few years' time. The selling of automobiles on the partial payment plan created a demand for some special agency to



finance the sales; the finance companies which were organized to supply this need made possible the growth of instalment buying by providing the necessary credit facilities for the extension of the system. Each new increase in instalment buying resulted in a still greater demand for the services of the finance companies, which rapidly increased in size and number. In function these companies are in certain respects like commercial banks, although very few of them are incorporated under the banking laws and subject to regular examination by the state banking departments. It is one of their functions to supply funds with which dealers can buy and carry a stock of goods. This activity is sometimes referred to as wholesale financing. They also extend credit on a large scale to individual purchasers of goods bought on the instalment plan. This is sometimes called retail financing. The one service helps the dealer to buy goods, the other helps him to sell them on the instalment plan. In the final analysis instalment financing is accomplished by borrowing from commercial banks; the major finance companies borrow to the extent of five times their capital resources, with a smaller ratio among the smaller companies.

The practises of finance companies in extending credit to individual purchasers of goods bought on the instalment plan are so varied that it is impossible to generalize as to their methods. In the case of the automobile business, however, considerable uniformity exists. When an individual buys an automobile on the instalment plan he is usually required to pay in cash one third of the purchase price and to give a note which provides for a schedule of equal monthly payments to be made over periods of time ranging from three to twelve or more months. The dealer if he is able to do so sells these notes outright to a finance company and thus receives cash for the goods sold on the instalment plan. When the dealer is able to sell the notes in this manner his legal responsibility ends. In most cases, however, he is required to endorse his customer's paper and assume the responsibility for its payment. Some of the finance companies discount the instalment notes in the regular way with banks located in the territory in which the notes originate. Others place their receivables in trust with some trust company and issue short term debentures against the trusted notes, which are sold to banks. Sometimes collateral trust bonds running for a period of about ten years are sold. In any case the finance company

secures additional funds with which to finance more instalment sales.

Finance companies were at first organized by men not connected with the producing enterprises, but later automobile companies formed their own finance companies (for example, the General Motors Acceptance Corporation organized in 1919). Some important finance companies are subsidiaries of commercial banks; generally, even when affiliated with a particular industry, the companies do a diversified business. There has recently been a tendency for finance companies to combine; this has been influenced not only by problems peculiar to the financing field but by the general tendency of American business. Concentration and centralization of control are accompanied by localized management; some of the finance companies have subsidiaries in foreign countries. In June, 1930, four finance companies had instalment paper outstanding amounting to \$525,040,000, or approximately one quarter of the total. The business is profitable, losses are small and failures are few. One of the larger finance companies, the Commercial Credit Corporation of Baltimore, with assets of \$171,000,000 in 1930 paid over a period of nine years 85 percent in stock dividends in addition to substantial cash dividends. The General Motors Acceptance Corporation with a capital of \$50,000,000 and assets of \$381,000,000 has an excellent dividend record; it paid 8 percent in 1923, 1924 and 1925 and 12 percent from 1926 to 1931 in addition to extras of 3 percent in 1926, 5, 7, and 8 percent in 1927, 1928 and 1929 respectively and 16 percent in 1930.

The development of the finance company has had the economic effect of making possible more steady production in an industry where demand for the product is seasonal. The volume of sales of automobiles in the beginning of the industry was subject to extreme seasonal fluctuations; they became more moderate with the improvement of roads and the increased use of closed cars, but demand still varies considerably through the year. The industry has therefore been confronted with the difficult problem of how to secure steady production to meet a seasonal demand. The manufacturer's own capital as well as what he could borrow was needed for manufacturing purposes; this and other factors made it impossible for him to carry his entire output over the winter months. He did not have adequate storage space; even if he could have provided it, the problem would not have been solved, for cars must be distributed geographi-

cally before the spring demand arises. The dealer could not take the cars off the manufacturer's hands because he did not have funds of his own and could not secure them from the regular banks for this purpose. The development of the finance company solved the problem. It extended credit to the dealer permitting him to lay in his stock as it was finished at the factory. The manufacturer was paid in cash. Production was continuous. Transportation was more easily effected as it was spread over a longer time and the spring rush was lessened. The dealer was able to show his stock on his sales floor and have it ready for immediate delivery in order to meet the seasonal demand.

Finance companies and retailers are able to extend credit to individual instalment buyers because they in turn are able to borrow from banks. Some large retailers who have well organized credit departments carry on their instalment business without the service of finance companies and borrow directly from the banks to finance their instalment sales. Thus one of the costs to the finance company or the retailer is the interest that must be paid on borrowed funds. A second element of cost is that of a sum sufficient to cover losses in the case of individual buyers who default in payment. While complete statistical information is lacking, it is reported that the losses sustained by finance companies as a whole average 0.5 percent; in automobile paper the loss is small, as low as 0.2 percent on aggregate new and used car paper. It should be observed that the finance company's rate of loss does not show the loss sustained by the dealer. Some of the paper was "recourse" paper, that is, paper carrying the dealer's endorsement and for which the dealer stood the losses; in such cases the finance company lost nothing except in the event of the dealer's default. In reference to the losses sustained by dealers the statistics compiled by the United States Department of Commerce, based on a study of 10,992 representative retail establishments located in all sections of the country and representing all the principal lines of retail trade, show that the average bad debt loss on instalment sales in 1929 was 1.2 percent. These losses ranged from an average of 0.2 percent for those selling coal, wood, lumber and building material to an average of 7.9 percent for general clothing stores. A third cost is that of making the preliminary credit investigations which are necessary if the credit is extended wisely. A fourth expense is incurred in the provision of the necessary facilities for making col-

lections on many small notes from numerous customers. There are other costs, particularly those in the nature of overhead expenses, such as the maintenance of places of business and the salaries of officers and general managers.

The cost of instalment credit to the consumer as evidenced by the difference between the cash and credit prices of goods varies greatly, ranging from nothing (where the cash and credit prices are the same) to as much as 80 percent, depending upon the individual transaction. Extensive inquiry among retailers of all kinds as to the cash and credit prices of various commodities and examination of the rate schedules of a number of finance companies indicate that the usual cost of instalment credit ranges from 10 to 40 percent. Nominal interest rates are of course lower, but the real cost to the borrower becomes larger because of the fact that the debt is repaid in instalments. In many cases the dealer increases the cash price of articles so that the spread between the cash and instalment price shall not appear excessive.

Reasoning a priori individuals in both the United States and Europe have come to widely different conclusions in regard to the effect of instalment buying on saving. Business men have frequently advised their employees to go into debt for homes on the ground that it will give them a stake in the community and their job and will make them work harder and save more in order to meet their financial obligations. It is also set forth as a reasonable supposition that if the individual is not paying for furniture, vacuum cleaners and washing machines he is apt to spend his odd dollars in the theater or for other ephemeral luxuries. It is also a fact that if the life of the commodity purchased is longer than the period of payment a saving has taken place. If, for example, the automobile has been paid for before it is worn out, the purchaser has made a saving—provided he has not taken the money out of his savings account or mortgaged his house to complete the payments on the automobile. On the other hand, it is stated that instalment selling causes people to buy and consume luxuries which they would not buy if they were required to pay cash. It is argued that the instalment buyer soon acquires the luxury habit by being able to possess these articles, and that the luxury habit thus acquired leads to spending and consuming rather than to saving. Those who think that instalment buying is not conducive to saving mention frequently the demoralizing effect of too much debt on the individual. Against this view it

may be argued that instalment buying substitutes a plan or orderly method of payment for arrangements which sometimes have had little system in them, and consequently has a distinct disciplinary value.

Instalment buying in its present volume has existed for a comparatively few years, and experience with it has been too brief to prove anything conclusive in regard to its effect upon savings. The goods bought and paid for on the instalment plan between 1920 and 1929 were apparently not paid for out of savings; while large quantities of goods were being bought and paid for and perhaps only partly consumed, the savings of all income groups were apparently increasing at an unusual rate. The statistics on savings are not conclusive, but they do seem to indicate that savings are at least not declining because of instalment selling. It is true that the \$2,500,000,000 of outstanding instalment debt is a liability of the instalment buying group. But it is also true that this liability is perhaps more than covered by assets in the form of more or less durable goods. Finally, there is a growing belief that savings have been over stressed in the past and that spending is as important a factor as saving in promoting economic progress and stability. The danger is that the individual unprotected by a comprehensive system of social insurance may ignore the needs of illness and old age in his urge to spend.

When first introduced instalment sales create new consumer purchasing power. The instalment debt outstanding at any given moment represents goods which would not otherwise have been sold or produced. Since instalment selling is necessarily limited to particular kinds of goods, there are limits to its expansion. When that limit is reached and stabilization sets in, instalment selling becomes an ordinary institutional factor in the business mechanism and ceases to be an additional stimulus to increasing production. This may have a disturbing effect on an industry keyed up to unusually rapid expansion, an effect which becomes still more disturbing if instalment sales decline.

Instalment selling also exerts a decided influence on the character and structure of industry. Most of the goods sold on time are of the more durable variety; in 1928 the instalment sales of automobiles, radios, washing machines, mechanical refrigerators and similar goods accounted for approximately 70 percent of all instalment sales. Instalment selling therefore stimulates the expansion of mass production industries with high

fixed charges—industries which are characteristic of modern large scale production.

During the period of greatest growth in instalment selling, between 1920 and 1925, it was frequently predicted that the next period of business depression would destroy the instalment system if not the entire retail credit structure. It was pointed out that because of the widespread unemployment which would result consumers would not be able to meet their obligations; there would therefore be a flood of repossessions, enormous credit losses and frozen accounts receivable, all of which would subject the credit structure to unbearable strain. Instalment risks, however, are highly diversified, spread over many classes of people. In a depression only a part of the population becomes unemployed, and the portion of the population subject to the unemployment hazard includes only a fraction of those who have instalment payments to make. Moreover the instalment buyer usually strains all resources to make his payments and thus prevent repossession. It is not to be overlooked that a certain period of time elapses between the outset of the crisis and the point at which unemployment becomes really acute, an interval sufficiently long for a considerable proportion of the outstanding debts to be repaid. Finally, instalment buying is not confined to wage earners and salaried employees. The income of other groups of instalment buyers is not so seriously affected by the depression as to endanger repayment; while the purchasing power of the fixed income groups is in fact increased by the fall in prices.

This view is apparently confirmed by the experience of the depression year 1930. Statistics gathered by the retail credit survey of the United States Department of Commerce show that changes in 1930 in comparison with 1929 were not of a serious nature. True, repossessions, past due payments, losses and management expenses increased and the earnings of finance companies declined, although lower interest rates in borrowed money constituted a favorable factor for the companies. Numerous individual dealers and purchasers had trouble with their accounts; the strain on many instalment buyers, forced to restrict expenditures or borrow money to meet their payments, was severe. But considering the fact that 1929 was on the whole a year of unusual business activity the changes were small. There were no disturbing increases or decreases in credit sales in relation to cash sales. Current obligations in the form of instalment accounts

for the first fourteen months after the crisis were paid in an orderly manner and new goods bought on these terms in the same proportion to cash sales as formerly, both showing approximately the same relative decline. Taking the system as a whole, instalment credit stood the test of business recession in a manner that may be considered satisfactory.

While instalment payments are met and the system satisfactorily withstands depression, an undoubted decrease in immediate consumer purchasing power takes place. Persons whose incomes decline make their instalment payments, but they are paying for goods previously bought and to that extent are unable to buy new goods. This is offset by the creation of new purchasing power when instalment sales are increasing, but that is not true in periods of depression when instalment sales decline. They declined sharply in 1930-31, years of depression; in the first nine months of 1931, for example, instalment sales of automobiles declined \$472,000,000, a drop of 20.4 percent over 1930. Precisely as instalment selling tends to increase prosperity it tends also to deepen and prolong depression; when, however, instalment selling begins once more to increase and create new purchasing power it becomes a contributing factor in business recovery.

Instalment selling according to all indications is here to stay; it has assumed a definite place in the institutional arrangements of business enterprise. The system, however, will probably show no unusual expansion in the future as it did in the recent past; instalment selling will depend more closely on the general rate of economic progress or regression.

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See: MARKETING; LOANS, PERSONAL; MERCANTILE CREDIT; SMALL LOANS; MORTGAGE.

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INSTINCT. The concept of instinct goes back, in a vague way at least, to Plato and Aristotle; it lacked specific definition among the Greeks because they did not distinguish clearly between inherited and acquired traits. With the revival of Greek philosophy in the Middle Ages the concept of instinct again appeared, especially in St. Thomas Aquinas, where it was identified more or less clearly with the idea of natural law working through the individual to produce responses that are inherent in his spiritual endowment. These spiritual endowments derived from natural law were fairly similar to the Aristotelian theological categories of the virtues and the vices. By the eighteenth century they had evolved into the definiteness of conscience, benevolence, sympathy and other moral sentiments and were basic to the philosophy of the English and Scotch ethicists of the seventeenth and eighteenth centuries, whose intellectual tradition harked back through Calvinistic predestination to natural law. The term instinct came into use with especial frequency in the writings of the eighteenth century and was made to refer not only to the

moral sentiments but also to the natural mental endowment. Specific instincts were rarely mentioned by name, and the concept remained for the most part general until well into the nineteenth century.

The growth of biological analysis in the middle of the nineteenth century and the rise of physiological psychology immediately thereafter as well as the great prestige of the biological approach to the study of man in that century stimulated the detailed analysis of mental heredity and the resultant classification of the instincts. This work was practically all speculative and *a priori* rather than experimental because of the difficulty of developing objective methods of analyzing the genetic aspects of behavior. The Germans, particularly Preyer, a disciple of Darwin, following the more general emphasis of the Scotch and English ethicists as well as the new biology, developed lists of specific instincts and attempted to apply these to the analysis of child and adult behavior. In the United States William James followed the newer German lead and developed some fifty separate instincts, but he in turn was surpassed in the matter of quantity by later psychologists, notably by Thorndike and Woodworth. In Great Britain the same tendency to particularize instincts developed a little later under the leadership of McDougall. The groups working in education and social psychology, which increased rapidly after 1900, took over the trend and developed a large variety of classifications.

As late as 1918 or even 1920 the active or passive support of the instinct hypothesis in the United States by psychologists, sociologists and educationists appeared to be almost unanimous; and the economists, political scientists and historians were beginning to develop an interest in the concept of instinct along with their expansion in the direction of a psychological orientation of their disciplines. As late as 1917 Dewey, for example, emphasized the importance of the instinct interpretation for social psychology. By 1922 he had shifted to a basic emphasis upon the importance of habit in character integration. Between 1921 and 1925 an acrimonious controversy arose over the question of instinct, and after the smoke and confusion were dissipated it seemed quite evident that the anti-instinctivists held the best positions on the field. The pro-instinctivists began to rearrange their broken legions in the form of redefinition and of substitute categories, such as drives, desires, wishes, hormic urges and prepotent reflexes;

others retreated and took up position with the endocrinologists, psychoanalysts, gestaltists and other diverse schools. In Great Britain the criticism of the instinct usage and hypothesis is only now beginning in earnest, while on the continent, where the instinctivist interpretation never became much of a scientific fad, the mild and relatively passive emphasis upon a general instinct interpretation continues.

Many conceptions of instinct have obtained since the term came into use. It can scarcely be said that there was any definite basis for a careful discrimination between inherited and acquired elements in so-called instinctive behavior until the critical work of Weismann and Mendel became generally available. The old metaphysical concept of natural law as the source of human behavior and character did not contain a theory of biological inheritance, although it leaned toward one in its later phases and thus favored the biological interpretation of instinct without eliminating entirely the environmentalist interpretation. The Lamarckian theory, which in the nineteenth century made the transition from the natural law to the scientific or analytic explanation of the origin and integration of human traits, combined in true eclectic fashion the concepts of environmental and hereditary factors without analyzing either concept in detail. The forced abandonment of the Lamarckian eclecticism brought about by the experimental work of Mendel, Weismann and others ultimately forced the analysis of the concept of instinct in purely biological terms. This analysis was finally performed by the present writer, thus forcing the issue of the controversy in terms of inherited biological structure and acquired or conditioned behavior patterns. It became evident that most of the so-called instincts were not inherited mechanisms but either acquired patterns of behavior or even conceptual language categories embracing large fields of functionally (not structurally) similar behavior. The new criticism on the basis of structural (including endocrine) biological analysis also forced the abandonment of the widespread practise of defining and classifying so-called instincts in terms of their adjustment functions instead of in terms of their genesis. More popular uses of the term instinct, making it equivalent to unconscious, unpremeditated, habitual or automatic activity, are being eliminated from writings in the field of the mental and social sciences, although they still freely persist among litterateurs and publicists, who usually come in contact with scientific criticism

only indirectly and frequently a generation or more after it has been made.

The definition of instinct most widely accepted has been essentially biological and has varied but little, if at all, in its general conception since the middle of the last century, although it has been subjected to greater precision of detail as biological knowledge has itself become more precise. In its simplest precise form this definition of an instinct may be stated as a specific and definite inherited or unlearned response which follows or accompanies a specific and definite sensory stimulus or organic condition that serves as a release to the inherited mechanism. This definition of instinct bars both the conception of acquired instincts and the related conception, not infrequent in German and continental philosophic literature, that instincts are inherited behavior patterns which were at one period of the history of the race the result of rational adaptation.

Among the most significant results for the social sciences of this stabilization of the instinct concept has been the revised outlook upon human society and social control made possible to the social scientist, the educator, the legislator and the administrator. The social scientists are confronted with the problem of distinguishing inherited forms of behavior from those which are acquired. The narrowing of the scope of inherited behavior patterns as thus analyzed must frequently turn the educator, legislator and administrator, in the face of some difficult personality or social situation, from the barren statement that "You can't argue with an instinct" or "You can't change human nature" to an intelligently constructive social program which will remove the obstructing or perverting conditioning factors and stimuli and lead them to substitute new environing pressures more favorable to the production of the desired adjustment. The effect of the more critical study of instinct upon the subject matter and orientation of the social sciences themselves has been even more marked. The most immediate and thoroughgoing response to this analysis was from sociology and the branch of social psychology which works from the standpoint of sociology; these disciplines were somewhat distantly and haltingly followed by social work, which is considerably under the influence of the psychoanalytic theories regarding instinct. The uncritical use of the term instinct by a branch of the institutional school of economics under the leadership of Veblen, who misapplied the erroneous

concept in an otherwise brilliant analysis of society, has been turned into a more fruitful environmental and cultural analysis of traditional and conventional factors conditioning economic behavior. Political psychology, which at first responded to an instinct interpretation under the leadership of Graham Wallas, is now recovering its balance through environmental and personality analysis. Psychology, which has closely trailed biology during recent decades, was slowest to respond generally to the new critical findings regarding instinct; but very recently the biologists themselves have begun not only tacitly but also openly to accept the environmental analysis and interpretation of the factors which are responsible for the cultural elements in human behavior.

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See: PSYCHOLOGY; SOCIAL PSYCHOLOGY; EDUCATIONAL PSYCHOLOGY; PSYCHOANALYSIS; HABIT; HUMAN NATURE; HEREDITY; BEHAVIORISM; ENVIRONMENTALISM; BIOLOGY.

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INSTITUTION is a verbal symbol which for want of a better describes a cluster of social usages. It connotes a way of thought or action of some prevalence and permanence, which is embedded in the habits of a group or the customs of a people. In ordinary speech it is another word for procedure, convention or arrangement; in the language of books it is the singular of which the mores or the folkways are the plural. Institutions fix the confines of and impose form upon the activities of human beings. The world of use and wont, to which imperfectly we accommodate our lives, is a tangled and unbroken web of institutions.

The range of institutions is as wide as the interests of mankind. Any simple thing we observe—a coin, a time table, a canceled check, a baseball score, a phonograph record—has little significance in itself; the meaning it imparts comes from the ideas, values and habits established about it. Any informal body of usage—the common law, athletics, the higher learning, literary criticism, the moral code—is an institution in that it lends sanctions, imposes tabus and lords it over some human concern. Any formal organization—the government, the church, the university, the corporation, the trade union—imposes commands, assesses penalties and exercises authority over its members. Arrangements as diverse as the money economy, classical education, the chain store, fundamentalism and democracy are institutions. They may be rigid or flexible in their structures, exacting or lenient in their demands; but alike they constitute standards of conformity from which an individual may depart only at his peril. About every urge of mankind an institution grows up; the expression of every taste and capacity is crowded into an institutional mold.

Our culture is a synthesis—or at least an aggregation—of institutions, each of which has its own domain and its distinctive office. The function of each is to set a pattern of behavior and to fix a zone of tolerance for an activity or a complement of activities. Etiquette decrees the rituals which must be observed in all polite intercourse. Education provides the civilizing exposures through which the potential capacities of individuals are developed into the abilities for performance, appreciation and enjoyment which are personality. Marriage gives propriety to the sex union, bestows regularity upon procreation, establishes the structure of the family and effects such a mediation as may be between personal ambition and social stability. A number of

institutions may combine and compete to impress character upon and give direction to the mass of human endeavor. The state claims primary obedience and imposes a crude order upon the doings of mankind; the law by punishing offenses and settling disputes determines the outmost limits of acceptable actions; morality with neater distinctions and more meticulous standards distinguishes respectable from unconventional conduct. The community is made up of such overlapping provinces of social government. It is the institution in its role of organizer which makes of this a social and not a monadic world.

It is impossible to discover for such an organic complex of usages as an institution a legitimate origin. Its nucleus may lie in an accidental, an arbitrary or a conscious action. A man—savage or civilized—strikes a spark from flint, upturns the sod, makes an image of mud, brews a concoction, mumbles a rigmarole, decides a quarrel or helps himself to what he may require. The act is repeated, then multiplied; ideas, formulae, sanctions and habits from the impinging culture get attached; and gradually there develops a ritual of fire, a hoe and spade agronomy, a ceremonial for appeasing the gods, a cult of healing, a spell for casting out devils, a due process of law or a sound business policy. Even if it is deliberately established an institution has neither a definite beginning nor an uncompromised identity. A religious creed or a legislative statute is compounded of beliefs and ideas which bear the mark of age and of wear; a paper charter and a document engrossed upon parchment are not insulated against the novelties in usage which attend the going corporation and the living constitution. It is impossible even in the most rudimentary culture to find folkways which are simple and direct answers to social necessities. In all societies, however forward or backward, the roots of the most elementary of arrangements—barter, burial, worship, the dietary, the work life, the sex union—run far back into the unknown past and embody the knowledge and ignorance, the hopes and fears, of a people.

In fact as an aspect of a continuous social process an institution has no origin apart from its development. It emerges from the impact of novel circumstances upon ancient custom; it is transformed into a different group of usages by cultural change. In institutional growth the usual may give way to the unusual so gradually as to be almost unnoticed. At any moment the familiar seems the obvious; the unfamiliar appears but a little revealed—an implication in a

convention which is itself taken for granted, a potentiality slowly quickening into life. So it is that the corporation is still a person, the work of the machine is manufacture, the labor contract concerns masters and servants and industrial accidents are personal wrongs. It often happens that new arrangements spring up under the cloak of an established organization. Thus the empire of the Caesars emerged behind the forms of the republic, the holy Catholic church is nominally the episcopal see of Rome and the British Commonwealth does its business in the name of His Majesty. In like manner in the domain of ideas the novelty in doctrine usually appears as a gloss upon the ancient text; systems of theology are commentaries upon the words of Scripture; Coke and Cooley set down their own understanding of the law upon the authority of Littleton and Blackstone. Thus too so intangible a thing as a social theory or a public policy may emerge from the practical commitments of the moment. A mere expediency, such as the abolition of the corn laws, is abstracted from cause and occasion and becomes a generalized policy of free trade; or a comprehensive scheme of railway regulation, such as obtains in the United States, appears as a by-product of the empirical elimination of specific abuses. In the course of events the fact arrives before the word and new wine must be put up in old bottles. Novelties win a tacit acceptance before their strangeness is noticed and compel before their actuality is appreciated. In institutional life current realities are usually to be found behind ancient forms.

As an institution develops within a culture it responds to changes in prevailing sense and reason. A history of the interpretation of Aristotle or St. Paul or Kant at various periods indicates how easily a document lends itself to successive systems of ideas. The public regulation of business has consistently even if belatedly reflected the prevailing winds of doctrine upon the relation of the state to industry. The pages of the law reports reveal the ingenuity with which, in spite of professions that the law remains the same, old rules and standards are remade to serve changing notions of social necessity. An institution which has enjoyed long life has managed to make itself at home in many systems of thought. The classic example is the Christian Gospel. The simple story of the man Jesus presently became a body of Pauline philosophy; the Middle Ages converted it into an intricate theological system and the rationalization of a powerful ecclesiastical empire; at the individualistic

touch of the Reformation it became a doctrine of the personal relationship between man and his maker; it is today patching up a truce with Darwinism, the scientific attitude, relativity and even religious skepticism. In this continuous process of the adaptation of usage and arrangement to intellectual environment an active role is assumed by that body of ideas taken for granted which is called common sense. Because it determines the climate of opinion within which all others must live it is the dominant institution in a society.

In an even broader way an institution is accommodated to the folkways of a culture. As circumstances impel and changing ideas permit, a usage in high esteem, like piracy, may fall from grace; while another under tabu, such as birth control, may first win tolerance and in time general acceptance. As one social system passes into another and the manner of living and the values of life are transformed, one institution gives way to another better adapted to the times. It required a number of changes in use and wont to convert the ordeal by combat into the trial by law; the prestige of the family tie, of blood vengeance, of the magical ritual and of might made right had to decline and a consciousness of the waste and injustice which attended legalized conflict had to become prevalent. An institution that survives, such as matrimony, responds surely even if stubbornly to cultural change. While the basis of Christian marriage is no more than the primitive custom of monogamy, the rigid lines of the institution bear the marks of the mediaeval order. It gave support to a caste system resting upon landed property, elevated the social values of family above the individual values of love, was blessed with the ascetic ideal of otherworldliness and became a sacrament. Companionate marriage is emerging from a different world of fact, appreciation, habit and belief. It reduces to usage an attempt to escape the rigors of matrimony without resort to casual relationships; it reflects the condition of an urban society where blood is no longer blue, life is impersonal, children are a luxury and women must earn their own livings. In a culture which develops slowly enough to allow a graceful accommodation folkways may be drawn together into rich and intricate institutional patterns. In the Middle Ages the usages of the church—the trinity, the creed, the litany, the ecclesiastical empire—were all fused into a single conventional whole, to which unity was given by the idea of the death of the god as a vicarious atonement. In



the late eighteenth century politics, law, economics, ethics and theology in separate domains alike attempted to superimpose a symmetrical system of mechanical principles upon the mass of human behavior; the common element was an analogue borrowed from physical science. In the social process the life of an institution depends upon its capacity for adaptation. But always amid the whirl of change elements of disorder are present; and long before a harmony is achieved between unlike conventions disintegration has set in.

Nor is an institution introduced from an alien society immune to this process of development. The act of borrowing merely gives the opportunity for its transformation. The nucleus is liberated from its cultural matrix and takes on the character of the usages among which it is set down. In their native habitat the books of the Old Testament were the literature of a people; in the strange world of the mediaeval schoolmen they became a collection of verses inviting dialectical exposition. In England "the higher law" was invoked to justify a popular revolution against an irresponsible monarchy; in America it has become the sanction for a judicial review of legislative acts. In appropriating the machine process Russia stripped away the enveloping business arrangements and made of it an instrument to serve a national social economy. The act of transplantation may at first retard but eventually is likely to promote growth. It introduces into a culture an unknown usage but allows it to emerge as an indigenous institution.

Its very flexibility makes an institution a creature of social stress and strain. In a stable or slowly changing society it fits rather neatly into the cultural pattern; amid the disorder which change brings its office may be compromised by the inflexibility of its structure. As necessity changes, tradition and inertia may stand in the way of the performance of new duties. A group of usages, for all the new demands upon it, may never quite escape slavery to its past. The shadow of ordeal by combat still hangs heavy over trial by law; the jury decides the contest, the judge is the umpire, the procedures are the rules of the game, the witnesses are clansmen armed with oaths and the attorneys are the champions; an appeal court orders a new trial not primarily for want of justice but because of error in the conduct of the ordeal. The United States Supreme Court has come to be the official interpreter of the constitution; yet by tradition its function is judicial, and it is only as an issue is germane to

the disposition of a case that it can declare the meaning of the higher law. Almost every institution—from the superfluous buttons on the sleeve of a coat to the ceremonial electors in a presidential contest—bears the vestigial mark of a usage which is gone.

But its elements of stability may be powerless to prevent the conversion of an institution to a service for which it was never intended. Its existence and repute give it value; it may adventitiously or by design assume a new character and play a new role in the social order. Equity, once an informal method of doing justice, now possesses all the appurtenances of a system of law. The principle of "no liability without fault" was once the basis of an individualistic law of torts; in our times the rules of recovery are being socialized, as, for example, in workmen's compensation, by a mere extension of "fault" to acts involving no personal blame. An institution may even fall into the hands of the enemy and be used to defeat its reputed purpose. Thus a community of ascetics develops into a wealthy monastic establishment; a theory of social contract invented as a justification of monarchy is converted into a sanction for its overthrow; a party dedicated to personal freedom becomes the champion of vested wealth; and a philosophy contrived to liberate thought remains to enslave it. As time and chance present their problems, men meet them with expedients as best they can; but those who contrive rules and formulae cannot control the uses to which they are put. The proneness of an institution, like a lost sheep, to go astray, has been caught in the sentence: "Saint Francis of Assisi set out to bring people to sweetness and light, and left in his wake a plague of gray friars." The folkways are marked by a disposition of event to belie intent.

In the course of time the function of an institution may be compromised by or perhaps even be lost in its establishment. The spirit may become the letter, and the vision may be lost in a ritual of conformity. In time a way of intellectual inquiry may become a mere keeping of the faith; a nice propriety in social relations may decay into a code of etiquette; or a morality intended to point the way toward the good life may come to impose the duty of doing right. Thus ceremonial replaces purposive action and claims a vicarious obedience. The existence of an informal institution gets buttressed about by prevailing opinion and by personal interest. In legislative "deliberation" statesmen cherish their stock in trade of time honored argument and resent the

appearance of unfamiliar issues; scholars of repute defend the established ways of inquiry and the accepted verities; and social lights conserving the older proprieties against feminism "entrench themselves behind their tea-cups and defend their frontiers to the last calling-card." The persons immediately concerned have their stakes in arrangements as they are and do not wish to have personal position, comfort of mind or social prestige disturbed. As it crystallizes into reputable usages an institution creates in its defense vested interest, vested habit and vested ideas and claims allegiance in its own right.

If an institution becomes formal, an even greater hazard to its integrity is to be found in its organization and its personnel. A need for order finds expression in a government or the demand for justice in a legal system or the desire for worship in a church; and various groups become interested in its structure and offices, its procedures and emoluments, its ceremonials and consolations. A host of officials great and small comes into being, who are as solicitous about the maintenance of the establishment to which they are committed. They possess preferences and prejudices, are not immune to considerations of prestige and place and are able to rationalize their own interests. As the scheme of arrangements grows rigid, "the good of the nation"—or the church or the party or the lodge or whatever it is—tends to become dominant. The lines of activity may be frozen into rigidity and ecclesiasticism, legalism, constitutionalism and ritualism remain as fetishes to be served. An institution when once accepted represents the answer to a social problem. In the maze of advantage, accommodation, sense and reason which grows up about it lies a barrier to the consideration of alternatives. Its successor for better or for worse is likely to prevail only through revolution or by stealth.

In its ideal likeness an institution usually creates its apology. As long as it remains vital, men accommodate their actions to its detailed arrangements with little bother about its inherent nature or cosmic purpose. As it begins to give way or is seriously challenged, compelling arguments for its existence are set forth. The picture-as-it-is-painted is likely to be rather a work of art than a representation of fact, a product rather of rationalization than of reason; and, however adventitious its growth, disorderly its structure or confused its function, the lines of its defense lack nothing of trimness and purpose. The feudal regime was an empirical sort of an

affair; men of iron lorded it over underlings as they could, yielded to their betters as they were compelled and maintained such law and order as the times allowed; but with its passing its sprawling arrangements and befuddled functions were turned into office and estate ordained of God. In the days of the Tudors kings were kings without any dialectical to-do about it; the overneat statement of the theory of divine right had to await the decadent monarchy of the Stuarts. The tangled thing called capitalism was never created by design or cut to a blue print; but now that it is here, contemporary schoolmen have intellectualized it into a purposive and self-regulating instrument of general welfare. If it is to be replaced by a "functional society," the new order will emerge blunderingly enough; but acquisition of a clean cut structure and clearly defined purpose will have to wait upon its rationalizers. An assumption of uniformity underlies all apologies; invariably they impose simple, abstract names, such as monarchy, democracy, competition and socialism, upon a mass of divergent arrangements.

In this endowment with neatness and purpose an institution is fitted out with the sanctions and trappings of ancient usage. Republican government harks back to Greece and Rome; the "liberties" for which seventeenth century Englishmen fought were the ancient rights of man. Magna Carta, a feudal document, was remade to serve the cause of Parliament against king; a primitive folk government was discovered in the dim twilight of the German forests to give to English democracy a fountainhead which was neither French nor American; and "the spirit of '76" grew up long after the event to serve the patriotism of another century. In the courts it is a poor rule which cannot find a good reason in former decisions and fit itself out with an ancient lineage. But law does not invoke the sanction of precedent more often than other institutions; the openness of its written records merely makes more evident the essential process. A succession of usages stretching from Aristotle to Calhoun has been justified as expressions of the natural order. Even—or above all—in the church the prevailing dogma is set down as interpretations of the creed of the apostles; and Christian marriage "was instituted by God in the time of man's innocence." As tradition leaves its impress upon fact, fact helps to remake tradition. The thing that is is the thing that always was.

It is only as stability gives way to change that the lines of an institution stand out in sharp re-

lief. So long as a people is able to do as its fathers did it manifests little curiosity about the arrangements under which it lives and works; the folk of the South Sea Islands can administer justice after their ways, but they can neither give answers to hypothetical cases nor tell in abstract terms what they do. So long as the procedure of a group or a school is unquestioned it is little aware of the conventions and values which give character even to outstanding achievement: Scott had little conscious appreciation of the distinctive qualities of the English novel; Jowett could never have put in terms the peculiar features of Oxford education; and Kant might not have been able to place his own philosophy in time and opinion. But the break of usage from usage within a culture and the resulting maladjustment lead to a discovery of the detail which makes up an institution. A number of crises were required to reveal the customs which are the British constitution; it took a Civil War to make clear the nature of the union between the American states. The appearance of social unrest was essential to an appreciation of the difference between competition and *laissez faire* and between industry and business. An aesthetic revolt marked by a riding into almost all the winds that blow was requisite to a realization of the distinctive modes and values in classical music and in Gothic architecture and to an appreciation of the molds imposed by acceptable form upon creative effort. For such casual glimpses of the intricacies of social institutions as men are permitted to see they are indebted to the stress and strain of transition.

It follows almost of course that institutional development drives a fault line between current fact and prevailing opinion. Men see with their ideas as well as with their eyes and crowd the novel life about them into outmoded concepts. They meet events with the wisdom they already possess, and that wisdom belongs to the past and is a product of a by-gone experience. As new institutions gradually emerge from the old, men persist in dealing with the unfamiliar as if it were the familiar. A national legislature by the enactment of antitrust laws tries to superimpose the competitive pattern upon the turbulent forces of a rising industrialism; a trade union uses the traditional device of a strike to advance wages in an industry in which the unorganized plants can easily supply the total output; a group of elder statesmen approaches the problems of war debts and reparations with the old formula of protection versus free trade. At a time when a

depression bears witness to economic disorder the institution of business is discussed in the outgrown vocabulary of private property, liberty of contract, equality of opportunity and free enterprise; and rugged American individualism is invoked as a way of order for a system which has somehow become an uncontrolled and unacknowledged collectivism. Even the Protestants as often as not turn belief into denial; and heresy shackled to an inherited ideology is merely a reverse orthodoxy. In the flux of modern life the various usages which with their conflicting values converge upon the individual create difficult problems that demand judgment; and in the course of very human events it is the fate alike of individual, group and society to have to meet emerging fact with obsolescing idea.

Thus an institution like the living thing it is has a tangled identity. It cannot be shown in perspective or revealed in detail by the logical method of inclusion and exclusion. It holds within its actuality the vestiges of design and accident, the stuff of idea and custom, from many ages, societies, civilizations and climates of opinion. In any important group of institutions, such as marriage, property, the market or the law, there are to be discovered as inseparable aspects of an organic whole notions, procedures, sanctions and values hailing from cultural points far apart. Each holds within its being elements in idea and in form drawn from the contemporary era of relativity, the rational universe of the eighteenth century, the mediaeval world of absolutes and verities and the folkways of some dim far off era. An institution is an aspect of all that it has met, a potential part of all that it will encounter. It holds many unknown possibilities which a suitable occasion may kindle into life. It may continue to hold sanctions which we think have departed; it may already have come to possess compulsions of which we are still unmindful. The discovery of its meaning demands an inquiry into its life history; but even the genetic method will tell much less than we should like to know of how a thing which cannot for long abide came to be.

Moreover the way of knowledge is itself an institution. The physical world, natural resources and human nature may be elementary things; but we can learn about them only in terms of and to the extent allowed by our prevailing methods of inquiry. The little we understand of the universe is a function of the size of the telescope, the sensitiveness of the photographic plate and the bundle of intellectual

usages called astronomy. Our national resources are a product of technology, and their catalogues at different times reflect the contemporary states of the industrial arts. It was the steam engine and the machine which made of coal and iron potential wealth; it was not until Faraday and Edison had done their work that electricity became potential energy. The little we understand or think we understand about human nature is an institutional product. The inquiries called physiology, anatomy and neurology—each of them a bundle of intellectual usages—reveal no more than the raw material of personal character; the stuff has ripened into individuality within the matrix of the prevailing folkways. Man and woman are so much creatures of custom and belief that the word innate is most treacherously applied to masculine and feminine traits. In various societies the stages upon which peoples must play their parts are set so differently by social heritage that we can as yet speak with little certainty about racial characteristics. The physical world and the human nature we know are aspects of the prevailing state of culture. In matter and in the chromosome may lie limitless possibilities; the actualities which appear are creatures of social institutions.

Among the ways of knowing is "the institutional approach." Institutes as the ordained principles of a realm of learning or of life have long existed; they are known to theology, law, education and all subjects ruled over by dialectic. About the turn of the last century a genetic study of the folkways began to win academic respectability. It could make little headway so long as the Newtonian concept was dominant; inquirers went in search of laws and uniformities, explanations were set down in mechanical formulae and the end of the quest was an articulate and symmetrical body of truths. The institutional method had to wait until the idea of development was incorporated into academic thought and the mind of the inquirer became resigned to the inconsistency which attends growth. The analogy with a biological organism had to be renounced and a basis in ideology had to be discovered before it could become a fruitful method of study in economics, history, philosophy, law and politics. The practical impulse toward its use came with a change in public opinion; so long as laissez faire dominated our minds, dialectic served well enough to turn out explanatory apologies for the existing social arrangements; when we began to demand that order and direction be imposed upon an unruly

society, a genetic study of how its constituent usages had grown up into an empirical organization seemed proper. An inquiry into institutions may supply the analytical knowledge essential to a program of social control or it may do no more than set adventures for idle curiosity. In either event the study of institutions rests itself upon an institution.

Accordingly an institution is an imperfect agent of order and of purpose in a developing culture. Intent and chance alike share in its creation; it imposes its pattern of conduct upon the activities of men and its compulsion upon the course of unanticipated events. Its identity through the impact of idea upon circumstance and the rebound of circumstance upon idea is forever being remade. It performs in the social economy a none too clearly defined office—a performance compromised by the maintenance of its own existence, by the interests of its personnel, by the diversion to alien purpose which the adventitious march of time brings. It may like any creation of man be taken into bondage by the power it was designed to control. It is a folkway, always new yet ever old, directive and responsive, a spur to and a check upon change, a creature of means and a master of ends. It is in social organization an instrument, a challenge and a hazard; in its wake come order and disorder, fulfilment, aimlessness and frustration. The arrangements of community life alike set the stage for and take up the shock of what man does and what he leaves undone. Institutions and human actions, complements and antitheses, are forever remaking each other in the endless drama of the social process.

WALTON H. HAMILTON

See: CULTURE; SOCIAL PROCESS; CHANGE, SOCIAL; HUMAN NATURE; CUSTOM, FOLKWAYS; FASHION; ASSOCIATION; COLLECTIVE BEHAVIOR; FUNCTIONALISM; ECONOMICS, section on INSTITUTIONAL ECONOMICS.

Consult: Lowie, R. H., *Primitive Society* (New York 1920); Sumner, W. G., *Folkways* (Boston 1906); Sumner, W. G., and Keller, A. G., *Science of Society*, 4 vols. (New Haven 1927-28); Veblen, Thorstein, *The Theory of the Leisure Class: an Economic Study of Institutions* (new ed. New York 1918), *The Theory of Business Enterprise* (New York 1904), and *Absentee Ownership and Business Enterprise in Recent Times* (New York 1923); Cooley, C. H., *Human Nature and the Social Order* (rev. ed. New York 1922), and *Social Process* (New York 1918), especially pt. vi; MacIver, R. M., *Community* (3rd ed. London 1924) bk. II, ch. iv; Hobhouse, L. T., *Social Development* (London 1924) ch. xii; Cole, G. D. H., *Social Theory* (London 1920) p. 41-44 and ch. xiii; Wallas, Graham, *Our Social Heritage* (New Haven 1921); Dewey, John, *Human Nature and Conduct* (New York 1922).

**INSTITUTIONS, PUBLIC.** Public institutions care for individuals who are in need of aid or treatment and whose disadvantages of condition or personality have been accepted as a public responsibility. For the destitute, the mentally disturbed or incapable, the physically handicapped, the aged, delinquent and dependent children, persons accused or found guilty of crime, institutional care may seem desirable or necessary.

Institutional care for all these groups, except prisoners, owes its rise almost wholly to the Christian church. Although it is true that the literature of early peoples, notably the Hebrews, contains frequent admonitions relative to the care of the poor and needy, such provision was purely an individual responsibility devolving upon the family and friends of the afflicted. In the case of the Greeks and Romans provision by the state for its destitute took the form of the distribution of public largess. Particularly in time of famine corn, oil and other commodities were given out to the poor, a practise which was the precursor of modern "outdoor" relief.

Nowhere in antiquity, however, is there evidence of the establishment of large scale institutions for the sick and the destitute, a development which characterized the Christian church from its inception. Xenodochia, or houses of refuge for the accommodation of pilgrims, grew up under religious auspices in the East and in Italy, and they were followed soon afterward by hospitals. The latter, ministering to the aged, the widowed and orphaned as well as to the sick and disabled, gave rise to the almshouse, the most familiar mediaeval institution of charity. To the church likewise belongs the credit for the first orphan and foundling homes, hospitals for lepers and incurables and asylums for the insane. In addition to the various ecclesiastical organizations there were institutions developed by the merchant and craft guilds for the relief of distress among their own members.

Out of this religious and secular beneficence grew municipal and state care of the poor and destitute. Partly because of abuses by the monasteries and ecclesiastical organizations in the exercise of their charitable prerogatives and partly because of a desire to share in the revenues devoted to philanthropic activities the various states in Europe manifested an increasing desire during the late Middle Ages to gain control of hospitals and almshouses. By the time of the Reformation the groundwork of public welfare in Europe had been recast, the towns and cities

having assumed what had always been the function of church and guild.

The notion of government responsibility for the problems of poverty, dependence and delinquency has gained especially wide acceptance in the Scandinavian nations, where public welfare has been the business of the state from the very first and where private institutional charity is almost non-existent. In Germany after the Reformation the parish became a civil unit for the purpose of administering relief. At the present time institutional care is extensive and diverse and remains under the administration of the government, except for certain ecclesiastical institutions, which are, however, subject to state supervision. In France the trend from private or ecclesiastical to public control of welfare institutions gained momentum with the advent of the revolution when the National Assembly declared all hospitals and almshouses public property and took over their administration. The central commission of *bienfaisance* created by these administrators, although it was but meagerly effective during most of the nineteenth century, was a work destined to last and it furnishes the impetus for the present system of institutional as well as outdoor relief in Paris. In all these countries as a rule public institutions for charity or correction—institutions for the criminal, insane and pauper—are under the direction of a central bureau or governing board.

In Soviet Russia relief is based on the principle of state responsibility and of the right of all workers to receive assistance from the state during illness, infirmity, unemployment, old age or any other form of distress. Under the auspices of the People's Commissariat of Social Relief and the Institute for the Protection of Women and Children, sanatoria for the mentally and physically handicapped, homes for deserted children and orphans, crèches, maternity homes and hostels for unmarried or destitute mothers and numerous other public institutions have been established. Public health occupies a central place in the government welfare program and all hospitals, clinics and sanatoria have been nationalized. These institutions, together with the health resorts, spas, rest and vacation homes maintained for the benefit of workers, are administered by the People's Commissariat of Public Health. The state, however, places primary emphasis on pensions and insurance and on the various rehabilitation schemes whereby those in need of care are not only provided with temporary institutional relief

but are given treatment and education through which they are enabled to resume their normal status in society. This prophylactic effort is especially apparent in the case of criminals and delinquents who, even though they are confined in prisons or houses of correction, are given every encouragement to mitigate their stay and to reestablish themselves as citizens.

In England as on the continent in the early days relief of the poor and dependent was in charge of ecclesiastical authorities. With the dissolution of the monasteries by Henry VIII, however, it became necessary for the state to assume the responsibility. Efforts to cope with the alarming increase of mendicancy during this period culminated in the Poor Law of 1601, which with its later modifications and revisions forms the basis for most public welfare work today in the United States as well as in England.

Provision of institutional care for public charges in the United States was at first an entirely local function. It was performed through the almshouse, which was established on the same principles as the English workhouse. Like its English prototype, the almshouse was used for all varieties of public charges, except criminals, without regard to sex, age, health or habit. It harbored paupers and vagabonds, dependent children and epileptics, the insane, blind, deaf, crippled, diseased and aged. It was a town or county institution, almost everywhere mismanaged or neglected. Provision for the detention and custody of persons accused or found guilty of crime was also local and characterized by the weaknesses of local administration. Early in the nineteenth century, however, as the evils of the almshouse system came to be recognized, special groups began to be segregated and cared for in special state institutions. The sick poor, the insane, orphan or deserted children, persons charged with crime or already found guilty, came increasingly to be considered as state charges and as groups with special and varied needs.

The first state hospital for the insane was that authorized by the Virginia legislature in 1769 and opened in 1773. The principle of state care for insane persons whatever their pecuniary status has now been adopted in all the states. In 1798 Kentucky included in a statute containing many of the reforms in the criminal law urged for thirty years by the great English law reformers the provision for a state prison, to which persons convicted of felonious offenses anywhere in the state should be sentenced. Today every state has its prison. Early in the nineteenth cen-

tury private benevolence provided institutions for the education of the deaf in Hartford, Connecticut (1817), and in Danville, Kentucky (1824); and their national significance was held to be so great that Congress voted them grants of public land to be sold for funds. In the late 1820's and early 1830's Samuel Gridley Howe, the philanthropist and educator, led the way toward provision for the education of the blind in Massachusetts and later of the mentally subnormal. His undertakings, like those at Hartford and at Danville, were cooperative and public funds were paid to private organizations for definite services. State institutions for the education of deaf and blind children were soon opened elsewhere and today they are found in nearly every state. In the west, however, most of them have been public from the first.

It is still a question whether for certain types of needy the treatment should be given by the local unit or by the state. In Massachusetts state as distinguished from local responsibility was early recognized in the care of the "unsettled poor," and three state almshouses were opened in 1854. Also for the group of juvenile offenders, or delinquent children as they would be characterized today, Massachusetts, departing from the program of the prison reform group in England, established state institutions, one for boys in 1847 and one for girls in 1854. In nearly all states, however, the care of the destitute and the detention of petty offenders have continued in the hands of local authorities; and the almshouse and jail remain today as unsolved problems and sources of humiliation to local public welfare administrations.

The administrative organization of state institutions has shown a certain degree of uniformity but also within limits a great diversity. For the institutions caring for the mentally and physically handicapped, insane, feeble-minded, deaf, blind or delinquent the pattern in the beginning was generally a separate unsalaried board of trustees or directors, appointed by the governor or by the governor and senate for overlapping terms; the board was thus supposed never to be entirely renewed at once and was supposed to be assured continuity of policy and freedom from partisan interference. The members were expected to represent the interests of the entire state. Often the board was given the power to appoint the superintendent and the staff of the institution, but sometimes, as in the case of the Massachusetts state almshouses, this power together with that of appointing the board itself was vested in

the governor. Although in recent years the value of these boards has been widely questioned, no adequate basis of judgment as to their serviceability has been supplied. The problem is so complicated, the records kept are so diverse and so lacking in comparability that contradictory conclusions are urged by equally able and well meaning students of the public service.

The existence of a number of state institutions, which operated independently of each other, and of various local authorities, which often overlapped in function, caused inevitably a good deal of confusion. In Massachusetts, for example, in addition to the local institutions for the relief of the destitute and the local law enforcing agencies there were by 1860 nine state institutions, each, as reported by a special joint committee of the house and senate in 1859, "created without especial reference to others, and in no degree as a part of a uniform system," and four others that received grants from the legislature. Because of the varieties and anomalies in organization and the rapid increase in public expenditures for state charities, which in Massachusetts had almost quadrupled in twenty years and more than doubled in ten years, the establishment of a central state board of charities was recommended, to which should be given power of visitation, inspection, transfer of patients and general supervision; by the exercise of this power it was hoped that some unity, uniformity and economy might result. As a result of this recommendation Massachusetts created the Board of State Charities in 1863, thus marking the first state attempt at central supervision. Similar authorities were established in 1867 by Ohio and New York; in 1869 by Illinois, North Carolina, Pennsylvania and Rhode Island; in 1871 by Wisconsin and Michigan; and in 1873 by Kansas and Connecticut.

From that time the administration of public institutions has been inextricably bound up with the problem of the organization of centralized state welfare authorities. These authorities in the early years were with few exceptions supervisory boards, which were generally composed of unsalaried members appointed for overlapping terms, as in the case of the local boards of trustees. They were given wide powers of visitation and inspection and were called upon to make researches into the causes of pauperism and crime and to take action leading to greater uniformity of practise as well as to the possible adoption of preventive measures and programs; but they usually had no direct control in administration, the separate boards of trustees re-

taining the actual management. In some states, however, the boards of trustees were soon rejected. Wisconsin, for example, after a period of "supervision" of state institutions by a state Board of Charities and Reform, abolished the separate boards of trustees in 1881 and transferred the administration of those institutions to a state administrative board, a plan that was later widely followed in other states. In general the administrative boards are composed of salaried members with direct control over the management of state institutions. In 1909-11 a careful study was made of the administration of state institutions in New York, where there was "partial centralization" under three different commissions of supervision and control. For purposes of comparison the investigator studied also the systems in Indiana, where the state central authority merely supervised the boards of trustees, and in Iowa, where there had been from the time the central authority was set up the greatest possible measure of central administration. The results seemed to indicate that an institution of four hundred or over could be served under the Indiana system at least as well as and possibly better than under the Iowa system. The report recommended state supervision and partial control and an organization which included institutional management by the separate boards of trustees (Wright, H. C., *Report of an Investigation of the Methods of Fiscal Control of State Institutions in New York*, New York 1911).

In 1917 there was undertaken in Illinois a system of one-man supervision and control which has had great influence. The entire administration of the state was reorganized and its functions were divided among nine (later eleven) departments at the head of each of which there was a director appointed by the governor. Most of the duties and responsibilities connected with the administration of the whole system of charitable, penal and reformatory institutions were assigned to the Department of Public Welfare. The purchase of supplies and equipment and the power to erect or repair buildings were vested in the Department of Public Works and Buildings, and to the Department of Finance were given broad powers of financial and budgetary control in all departments.

Since that time the authorities have been reorganized in many states. The administrative arrangements for state charitable and correctional institutions, as they were in 1927, could be roughly grouped into five principal types of programs: public welfare departments resem-

bling that of Illinois in the attempt to departmentalize (California, Colorado, Idaho, Massachusetts, Michigan, Nebraska, New Jersey, New Mexico, New York, Ohio, Pennsylvania, Washington); single authorities in the form of supervisory boards (Delaware, Georgia, Indiana, Louisiana, Maine, Maryland, Montana, New Hampshire, North Carolina); administrative boards, either unpaid or ex officio (Connecticut, Florida, Kentucky, Oregon, Rhode Island, South Carolina, Vermont, Virginia, Wyoming); salaried boards of control (Alabama, Arizona, Iowa, Kansas, North Dakota, Oklahoma, South Dakota, Texas, West Virginia, Wisconsin); two or more separate authorities (Arkansas, Minnesota, Missouri, Tennessee). Three states (Mississippi, Nevada and Utah) have never created any central authority.

Although the movement toward centralization has been widespread it has been limited to the governmental arrangements of the states, and there has been no effective approach toward greater uniformity and cooperation between or among states or between the central and local jurisdictions in the states. There is as yet no national system. Such organizations as the National Conference of Social Work, the American Prison Association, the National Committee for Mental Hygiene, the American Association of Public Welfare Officials, have done valuable educational work and helped to achieve a unanimity of view, promoted national conferences and stimulated interest on the part of officials and of members of the legislatures, but the results are still far short of what could be desired.

As a consequence of this lack of unified direction there remain a number of important questions awaiting further agreement. Whether all the administrative institutions, penal and charitable, should be centralized in one department, as was done in Illinois and later in New Jersey; or whether there should be, as in Massachusetts and New York, separate departments of mental diseases, of corrections and of charities or public welfare caring for the destitute separately from the other groups, are subjects on which discussion is by no means closed. All these services have certain problems in common, such as the provision of shelter, food, clothing and hygienic and decent living conditions, and they all need similar provision for the investigation and diagnosis of individual requirements. It may well be desirable to have a degree of flexibility in the use of the different types of institutions. It is, nevertheless, equally clear that their spe-

cialized tasks vary greatly and call for the services of persons professionally equipped in different fields: the mental expert, the physician, the nurse, the teacher, the prison administrator, the dietitian and nutrition worker, the occupational therapist and so forth. Another problem on which agreement does not exist is the degree to which the separate institutions should serve the agencies in the local units or should be the instrumentalities through which the central authority secures such treatment as its diagnosis would suggest. This is perhaps a wider question than that of institutional organization. Shall the county authorities commit an insane person to an institution or to the department? Shall the juvenile court commit a delinquent child to an institution or to the department? Shall the criminal court sentence a guilty defendant to an institution or commit him to an authority? The relationship of institutions for the education of blind and deaf youth to the central authority involves another problem of jurisdiction. The origin of these in the provision for young persons from lower income levels and the fact that relief in the form of transportation and clothing is provided by public money have led to their being included in the general welfare structure. The teachers in these institutions, however, have frequently urged that they be universally regarded as part of the educational organization. Concerning these questions much greater unanimity may be expected in the future.

At a time when neither domestic nor institutional management had been placed on a professional basis, when cost accounting had not yet been developed, when the budget had yet to be accepted as a necessary device and central purchasing was an untried experiment, the rapid increase in the number of public positions and in the amounts of public money to be expended resulted in great waste in the use of public resources and great temptations to the corrupt and selfish. The situation was brilliantly and comprehensively summed up by Samuel Gridley Howe in 1866 in his first report as chairman of the Massachusetts Board of State Charities. Since that time the adoption of a budget and provision for some form or degree of cooperation, if not centralized purchasing, have characterized the development of institutional care in all the states. With regard to personnel the use of competitive examinations after the pattern set by the United States Civil Service Act of 1883 has been followed in ten states (California, Colorado, Illinois, Kansas, Maryland, Massa-



chusetts, New Jersey, New York, Ohio and Wisconsin). Other states resort to classification and to statutory descriptions of required qualifications for selected positions.

The Bureau of the Census has prepared several special reports which provide some illuminating figures concerning the number of inmates and the cost of their care in state institutions. Between 1910 and 1923 the number of hospitals for mental patients in the United States increased from 366 to 526. In the former year there were 143 state hospitals caring for 159,096 patients; in the latter, 165 caring for 229,837. Of the patients in these hospitals 34.2 percent, or more than one third, had passed ten years or more in such an institution, and 13 percent twenty years or more. In 1922 with an average daily patient population of 225,685 the per capita cost for maintenance in 153 mental hospitals was \$282.13 a year. The corresponding figures for 1928 for 159 hospitals were an average daily patient population of 264,484 and a per capita cost for maintenance of about \$309. If the costs for the services of the 23,788 nurses and attendants, 1223 physicians, 670 occupational therapists and 153 social workers be included, the total per capita cost for operation and maintenance becomes about \$360.

In 1928 there were 73 state institutions for the feeble-minded and epileptic. Reports received from 71 of these institutions showed 68,269 inmates in 1928 as compared with 66,444 in 1927 and 47,337 in 1922; during 1928 there were admitted 11,169 as compared with 10,224 in 1927 and 8565 in 1922. There was a marked decrease in the per capita cost of operation and maintenance during this period. In 1922 with an average daily resident patient population of 43,674 in 58 institutions the per capita cost was \$414.76; in 1927 the figures for 65 institutions were 57,104 and \$392.71; in 1928 for 67 institutions they were 61,295 and \$388.49.

The census reports 100 state and federal penal institutions in 1928, under whose control there were at the beginning of the year 109,346 prisoners, of whom 4363 were women; during the year 67,769 were admitted (3784 women) at a total cost of \$29,298,641, of which \$11,043,060 was paid in salaries and wages, \$6,594,671 for provisions. With an average daily population of 91,305 the per capita cost of state and federal penal institutions during 1928 was \$320.89. Figures for other groups, such as children under institutional care, paupers in almshouses or prisoners and juvenile delinquents,

are also easily available from the census reports.

An interesting feature of the cost of institutional services is that although they are considerable they are constituting a relatively smaller percentage of public expenditures, especially as compared with those for schools and highways. The total state expenditures for charities, hospitals and corrections increased from \$89,189,400 in 1915 to \$215,627,016 in 1929, but in 1915 they represented 23.5 percent of all state expenditures and in 1929 their percentage had dropped to 16.6. In 1915 the percentages for schools and highways were 38.5 and 6.0, and in 1929 they rose to 39.8 and 16.9 respectively (United States, Bureau of the Census, *Financial Statistics of States, 1920, 1931*, p. 26, 28).

With the increasing numbers of institutional inmates there has been a growing demand that treatment in each case be adapted to the actual needs of the individual patient and directed both toward mitigating the effect of his particular handicap and toward lessening any social disadvantage associated with it. The development of professionally equipped social workers makes this more possible, and although it entails greater expenditures and somewhat more elaborate organization it also results in greater economy and decrease in human suffering. Institutional custody is not always desirable or even necessary; a complementary service can be rendered by supervisory agencies which make possible approximately normal life in the community for many "wards of the state" who at an earlier date could have been cared for only in institutions. The idea of treatment has always been present to some degree in the case of the insane and the sick; for the mentally deficient, the blind, the deaf and the young offender education as well as custody is now being provided; and in the case of delinquent boys and girls and adult prisoners there is usually some effort toward reformation. Mothers' pensions and foster homes for dependent children, probation for the delinquent child or adult, parole for the adult prisoner or mental patient, are illustrations of the way in which a professional public social service can complement the work of institutions.

S. P. BRECKINRIDGE

*See:* CHARITY; HUMANITARIANISM; PUBLIC WELFARE; SOCIAL WORK; SOCIAL INSURANCE; PUBLIC HEALTH; HOSPITALS AND SANATORIA; ALMSHOUSE; OLD AGE; DEAF; BLIND; CRIPPLES; MENTAL DISEASE; MENTAL DEFECTIVES; CHILD, section on INSTITUTIONS FOR THE CARE OF CHILDREN; PENAL INSTITUTIONS; POOR RELIEF.

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## INSURANCE

PRINCIPLES AND HISTORY.....	ALFRED MANES
INDUSTRY.....	A. H. MOWBRAY
LAW AND REGULATION.....	EDWIN W. PATTERSON

**PRINCIPLES AND HISTORY.** The theoretical treatment of insurance in American economic literature differs from that in European, particularly German, literature. Many outstanding American writers consider insurance as only one of the numerous risk covering agencies and therefore give inadequate or primarily legalistic definitions of its functions. Elsewhere this point of view is not generally held; with Germany as its center of growth, insurance has developed as an independent discipline distinct from other fields of economics and as such has received separate and extensive treatment. There is, however, general agreement among most economic theorists that the essence of insurance lies in the elimination of the uncertain risk of loss for the individual through the combination of a large number of similarly exposed individuals who each contribute to a common fund premium payments sufficient to make good the loss caused any one individual. Therefore before insurance can be undertaken on a sound economic basis not only the nature of an insurable risk but its probable occurrence and resulting loss must be determined.

It is obvious that all risks are not equally subject to indemnification by means of insurance. The chance or the uncertainty as well as the measurability of various types of risk differs. From an insurance standpoint there is no risk

unless there is uncertainty or, to use a better term, fortuitousness. It may be uncertain whether the risk will materialize in any particular case. Even death may be considered fortuitous, because the time of its occurrence is beyond control. Pure risks, such as hail or storm, cannot be produced deliberately by human agency; but there are many risks, such as fire, burglary or suicide, in which deliberate speculative causation can play an important part. Insurance as such, however, ceases to exist when more than the expected need is covered; that is, when a profit is consciously and deliberately planned for. In such cases insurance partakes of the elements of betting or gambling. This characteristic would be still more obvious were an individual to insure against someone else's risk and profit by its occurrence. There must always be the possibility, however remote, that the hazard will cause personal and direct loss to the insured, who must have, in legal phraseology, an insurable interest.

To secure a minimum of accidental over-insurance or underinsurance it must be possible to measure statistically the probability of the occurrence of the risk. The hazard must belong to a class large enough to conform to the theory of probability and to be calculable according to the law of averages, as must also the amount of coverage required and the number, magnitude

and duration of the premium payments. For two individuals to afford each other mutual protection would not be insurance; the law of large numbers would not apply and the degree of uncertainty would be too great. But when many thousands of persons or houses are considered, the risk and the future financial requirements are measurable once human ingenuity has devised a suitable technique, an actuarial science, for this purpose. In order that these future financial demands shall be met, however, certain economic conditions are prerequisite, such as the existence of a unit of value and suitable means of accumulating wealth through extensive capital investments. This does not mean that coverage has to be provided in money; it may take the form of goods (medicines, cemetery plots) or repairs (automobile or house repairs) or services (medical aid or legal assistance), depending on the type of hazard or risk.

The risk itself may involve a direct loss (burning down of a house), loss of profit (destruction of crops by hail or interruption of business), loss of capital (bankruptcy), loss of income (unemployment or strikes), the cessation of ability to save (advanced age), expenditures to avoid a threatened loss (prosecuting a liability case) or planned expenditures (endowment for a college education). In all these cases there exists a need for money or for the equivalent of money produced by a risk of some sort. Although risks

such as embezzling and the guaranteeing of mortgages are not pure insurance risks, they are generally considered so by statutory authorities.

The three principal branches of insurance—life, fire and marine, and casualty—may for convenience be grouped according to the interests insured, that is, coverage of tangible and intangible property risks and of personal risks, as in the accompanying classification. The practise of insurance companies, influenced as it is by tradition and statutory regulation, does not always follow specialization by forms as enumerated below. On the other hand, a more detailed analysis would show that each of these forms represents a variety of separate risks.

There is a fundamental distinction between the type of loss which life insurance and health insurance attempt to cover and other losses. If a house is damaged by fire or crops are harmed by storm, there is ordinarily some objective measure of the loss, and only this actual loss or a percentage of it is made good. In other words such insurance operates in greater or less degree as a contract of indemnity. But when an individual's life or earning power is affected no accurate measure of its value is possible. The insurance contract therefore assigns the risk a fixed value, which is all that the insured receives when the policy falls due.

The economic function of insurance is not the elimination of risk or loss—although insurance

#### CLASSIFICATION OF INSURANCE FORMS

PROPERTY INSURANCE		PERSONAL INSURANCE			
LOSS RESULTING FROM IMPAIRMENT OR DESTRUCTION OF		LOSS OF INCOME OR INCREASED EXPENDITURE DUE TO			
TANGIBLE PROPERTY	INTANGIBLE PROPERTY	DEATH	SURVIVAL	IMPAIRMENT OF HEALTH	INABILITY TO SELL LABOR POWER
Marine and other transportation	Compensation and liability	Life	Old age	Sickness	Unemployment
Automobile	Credit	Burial	Juvenile	Maternity	
Fire	Business interruption			Accident	
Flood and storm	Strike			Invalidity	
Crop and livestock	Market loss				
Burglary	Title and mortgage				
Embezzlement	Corporate bonding				
Boiler and machinery	Reinsurance				
Plate glass					
Depreciation					

organizations may find it profitable to engage in this activity—but rather the substitution of a known small loss for an uncertain large loss. The implications of this function are not as negative as they at first appear. Society as a whole benefits through the accumulation of capital reserves which make good the loss resulting from the destruction of valuable assets; business costs are lowered to the degree that risk is eliminated and credit strengthened; and the insured individual is enabled through mutual action to obviate poverty and destitution for himself and his dependents. The fact that the payments of all participants aid each participant in case of need is an essential characteristic of insurance. This principle of mutuality is not limited in the slightest degree to mutual companies but applies to all insurance organizations whatever their legal structure, to stock companies as well as to government insurance funds. The more numerous the individuals of each class who share the risk, the more exactly can it be estimated and the more cheaply can it be covered and protection administered. It is precisely because insurance is mutual that public opinion, even in states predominantly capitalistic, has almost universally caused the governments to abandon the theory of individual initiative in favor of compulsory insurance of risks such as health, workmen's compensation and fire.

Insurance has not been possible at all stages of economic development, nor is it probable that there will ever exist insurance for the coverage of all conceivable risks. In addition to such obstacles as an insufficient knowledge of the facts there may be an inadequate capacity for organization or legal and religious prohibitions, such as the ban on the taking of interest. The concepts of prerequisite conditions have changed considerably in the course of time; experience has shown that an imposing structure can be erected upon foundations which were considered inadequate in less highly developed periods; technological advance has brought with it new and formerly unknown hazards to life and property. Modern life is surrounded by a vast number of latent dangers produced chiefly by the harnessing of natural forces whose direction is entrusted to fallible human beings. On the other hand, even when all the technical conditions have been met, insurance will not be realized if there exists neither an economic need among a sufficiently large number of people nor the desire or the financial ability to make use of it. To the prerequisite conditions for the development of in-

surance might be added certain subjective limits arising from the ethical outlook of the individual and of his social group.

The history of insurance is as yet unwritten: only milestones of its evolution are known. Devices resembling insurance were not unknown in antiquity. In imperial Rome, for example, there existed collegia, associations of artisans, which paid the surviving dependents of their members a funeral sum in return for the payment of an initiation fee and monthly premiums. Loans on bottomry were common. Few such institutions of antiquity, however, survived into the Middle Ages. In most of the early mediaeval insurance institutions (funds for freeing comrades from imprisonment, for mutual bearing of losses due to fire or the death of cattle and for replacing cattle stolen from members of a guild) groups of persons joined together because of common interest. But with the sense of common interest both within and without the guild funds there was associated the acquisitive instinct to which modern insurance owes its origin, its entire development and its beneficial effects. The origin of insurance as a profit making business lay not so much in the guild system as in Italy's marine insurance trade, which began about the middle of the fourteenth century. Here the early phase of insurance ends. The first period of its evolution proper, characterized by the introduction of the insurance contract, lasted until the end of the seventeenth century. The second period, marked by the founding of insurance stock companies, includes the eighteenth century and the first half of the nineteenth. In the third period, which comes down to the present day, social insurance developed alongside individual insurance, while the latter, expanding everywhere beyond the boundaries of the several countries and continents, evolved into big business. In this general evolution there can be distinguished three types of insurance operation, more or less independent, not successive but rather passing often and continuously from one type to another. These three types may be called cooperative, capitalistic and governmental.

The organization of insurance on a cooperative basis is motivated by the same causes and follows essentially the same development in modern times as in antiquity. The capitalist type of insurance, the insurance business proper, was born of marine insurance, which, of Roman origin, was founded for profit and based on commercial calculation. Fire insurance, on the other hand, arose by the beginning of the six-

teenth century in Germany as a communal undertaking, developing thereafter partly as a governmental institution and partly as a business. The capitalism which characterized the second period of growth beginning with the end of the seventeenth century is expressed in the development of stock insurance companies. The first precursor of the modern insurance concern was a short lived marine insurance company founded in 1668 in Paris. Two marine insurance companies founded in England in 1720 are still in existence. In Germany the first corporation for marine insurance was founded in Hamburg in 1765 and another concern of the same type was founded during the same year in Berlin. Life insurance in its present form arose almost a hundred years later than marine and fire insurance of the modern type because of the fact that life insurance is built upon more scientific foundations. There was no mathematical statistical mortality research, essential to the modern life insurance company, before the end of the eighteenth century. Its development was moreover impeded by the legislation of previous centuries, which forbade the taking of interest, gambling or betting and which—not always unjustifiably—viewed life insurance as a bet or as a dangerous gamble because of its almost criminal excesses. The last third of the eighteenth century witnessed the rise of hail insurance and cattle insurance as aids to the new intensive agriculture.

The highly differentiated economic life of the second half of the nineteenth century brought with it numerous cultural gains accompanied by new dangers and new requirements: the growth of railroads; the increase in factory production and the liability of the entrepreneur; improved methods of building, especially the wider use of glass windowpanes, the installation of water pipes in dwelling houses; the extension of credit and mortgages; the rise of the automobile and of aircraft. All these innovations made room for the spread of the idea of insurance. Accident insurance was introduced in 1845 and liability insurance in 1876; these were followed by glass insurance, insurance against damage to water pipes and so on. Corporate fidelity bonding was first practised in 1840, title insurance and credit insurance developed in the 1890's, workmen's compensation met the need of statutory requirements of the early twentieth century and public liability insurance, especially of automobile risks, has expanded rapidly in the last decade. The expansion of the insurance industry made

necessary in turn the extension and spread of reinsurance, which more and more displaced coinurance. But the new epoch is even more clearly characterized by the growth of the insurance companies into enterprises operating on an international scale, by the founding of subsidiary companies and by the formation of cartel-like associations of entrepreneurs in all large countries and in all branches of insurance.

The introduction of social insurance proved an influential factor in the development of insurance during the last half century and has been most extensively developed in the various branches of personal insurance. Social insurance is not so much a new principle as the combination of various elements which may be found separately in individual insurance, whether private or mutual: compulsion, the establishment of monopolistic state funds, partial support by treasury funds and more distinctively the levy upon employers for premium payments. Social insurance originated in Germany and is closely connected with the name and the policies of Bismarck, who introduced sickness insurance in 1883, accident insurance in 1884 and disability and old age insurance in 1889.

A new era of growth began with the end of the first decade of the present century; new general insurance companies were formed for the writing of branches of insurance which previously had been undertaken separately. In addition numerous unions of local insurance societies and of those limited in membership were organized, leading increasingly to that more general distribution of risks which is especially advantageous for insurance. The World War did not exert as destructive an effect upon the position of insurance in economic life as might have been supposed, and between 1918 and 1923 more new companies were founded than in any previous five-year period. The effect of the post-war inflation period was catastrophic, but the successful stabilization of currencies brought with it to an astonishing degree a rapid and extensive growth of insurance. Horizontal concentration to reduce competition has been especially characteristic of this period. But vertical concentration, for instance, in the form of the combination of insurance and reinsurance within the same concern, is not uncommon. The increasing importance of the insurance industry has everywhere resulted in legislation leading to more effective state supervision of its conduct and its policy forms.

ALFRED MANES

**INDUSTRY.** In any survey of the modern economic world the business of insurance must have a prominent place. In the United States, where insurance is probably more extensive than in any other country, the aggregate insurance premiums of all classes of carriers for all types of risks is nearly \$6,000,000,000 annually; yet even in this country the full potential development has not been approached. Some American and more particularly English companies do an extensive foreign business in various parts of the world; today there are local companies even in such relatively undeveloped regions as the Fiji Islands. Moreover in many European countries governmental systems of social insurance are even more important than private systems.

By its nature the insurance business is a quasi-public utility. To be effective it must deal with large numbers of individuals, few of whom have any clear idea as to its fundamental principles. Through inequitable treatment harm might be done large classes of policyholders and unfair advantages be given others. And while it is possible to carry on a limited insurance service on the assessment principle, extensive operations require advance collection of premiums and sometimes, as in life insurance, the collection of at least a part of the cost many years before requirement for loss payment. Thus arises the need of wise conservation of unearned funds in reserve for future expenditure. For this reason most governments have assumed greater or less powers of supervision of the investment policies, rates and related aspects of the insurance business. While the industry has not yet been generally required to undertake the responsibility imposed on public utilities of justifying to a public authority its refusal to serve any who apply, this requirement, dangerous in insurance because of the intangibility of moral hazards, has been imposed in a few cases.

In the development of the insurance industry several types of carriers have received recognition of supervising authorities. None has yet proved so superior as to warrant acceptance as the one proper type; and only one, the individual underwriter acting alone, has passed from the stage. It is difficult to visualize a new type more effective than any yet developed; nevertheless, it might be unfortunate if supervision should cause such standardization as to preclude this possibility. Any new development must necessarily be surrounded with adequate safeguards for the public to whom it may offer its services. By a wise choice of carrier the insured may often

gain distinct advantage; not all types are suited to every condition, and careful discrimination is important. The tendency on the part of the insuring public in the United States to rely too greatly on a government license as a guaranty of safety imposes a distinct limitation on the range of permissible experiment.

Existing types of carriers fall into three general categories: proprietary, cooperative and governmental. In addition, notice may be taken of self-insurance. There is a real distinction between non-insurance and true self-insurance. Under non-insurance risk is not eliminated by artificial means, although extensive operations involving separate risks may bring about considerable regularity in loss occurrence. True self-insurance involves the establishment of a fund into which regular payments are made and from which losses are paid. Self-insurance is practicable only when the operations of the self-insurer are so conducted that a large number of independent risks are present, such as would be brought together through the operations of a professional risk carrier. The workmen's compensation and public liability risks of a metropolitan street railway system are examples of those suitable for self-insurance treatment. But even in this case the fund should be protected by an adequate surplus or reinsurance against an unusual concentration of losses in a brief interval of time.

There are two types of proprietary insurance carriers: individual underwriters, operating in syndicates, and stock corporations. Under careful supervision, such as is exercised by Lloyd's of London, underwriting syndicates have proved satisfactory as carriers of short time risks. Indeed they have furnished for centuries and still furnish a major part of the marine insurance of the world. They are not suited for and have not attempted the long time coverage of life insurance. The chief drawback in dealing with members of underwriting associations is the uncertainty of continuous financial responsibility except in cases where somebody, such as the Lloyd's committee, has power to use adequate pressure to assure it. Stock corporations have proved satisfactory carriers in all fields of insurance, although they are not per se proof against mismanagement. With adequate regulation and in some countries with merely enforced publicity of accounts and transactions only reasonable care on the part of the insured has been necessary to maintain his safety. In the United States the most serious criticism is that expense of operation is excessive, primarily because of the

cost of acquiring business under a competitive system which employs agents paid by commissions on premiums.

There are three distinct classes of cooperative risk carriers: first, friendly societies (*q.v.*) or fraternal orders (*q.v.*); second, mutual corporations; third, interinsurance, or reciprocal, exchanges. The distinguishing characteristic of the first group is the operation through local lodges which are also centers of social activity. Such lodges have generally confined their insurance activity to life insurance and the granting of disability benefits. Until recently they have tended to ignore actuarial principles and consequently have been forced to make painful readjustments. Low cost and social attractions have constituted their chief drawing card.

Mutual corporations may be subclassified according to their reliance on the assessment of members or on advance premium collections for the payment of losses. Even when reliance is placed principally upon assessment, it is the usual practise to collect a sufficient sum in advance to pay losses in the interval between assessment periods. Assessment is practical only for carrying risks closely uniform in kind and degree; it fails utterly when these conditions are lacking or in cases of progressive risk, as in life insurance. Its chief advantage is low operating cost because of simplicity of organization. The advance premium system, on the other hand, may or may not have coupled with it a supplementary assessment liability of the policyholder; in life insurance on an actuarial basis such provision is not common. The advance premium is usually more than adequate and excesses are refunded through so-called dividends. Since advance premiums in both stock and mutual systems must be conservatively determined to assure adequacy, mutual companies have the advantage of more accurate subsequent adjustment to actual cost. Except in life insurance, where the agency methods are similar to those of the stock company, lower costs are frequently realized usually by virtue of lower operating costs, principally acquisition costs; sales staffs work either on a salaried basis or on a lower scale of commissions than do the representatives of stock companies. In contrast dividends paid by the mutual life insurance companies derive mainly from interest in excess of that assumed in the actuarial calculations as well as from savings in mortality. The loadings by which gross premiums are derived from the net premiums found by actuarial calculations frequently contain a

margin for dividends, which in times of emergency may also be a safety factor. Mutual companies outside the life insurance field, in which they predominate in America, have been most successful in acquiring highly protected manufacturing risks for fire insurance and workmen's compensation insurance and isolated dwelling and farm buildings for fire insurance. In the large companies where the policyholders control in name only the high salaries paid the officers have taken the place of profits as an incentive to efficient operation.

Interinsurance exchanges are unincorporated groups of individuals reciprocally insuring each other and operating through an attorney-in-fact who is given a power of attorney by each member in the course of his application. In general, advance "deposits" are made by the several members against which the members' proportion of losses and expenses are charged. Periodically an adjustment is made by refund of balances or collection of deficiencies. While the attorney-in-fact is usually invested with full powers to do anything necessary for the conduct of the exchange he is not personally responsible for the results of unwise underwriting or loss adjustment. When the exchange is managed by a competent and honorable attorney-in-fact and membership is confined to the financially responsible with substantially similar risks, such exchanges have proved satisfactory carriers and have operated at low cost. In a number of cases, however, the plan has been subjected to grave abuse by irresponsible and dishonest individuals, who set up exchanges under their attorneyship and offer coverage to the general public without adequate explanation of the nature of the carrier.

Governmental carriers, that is, state insurance funds, are of two types. The term is applied, on the one hand, to a self-insurance fund for carrying risks to which the state and its subdivisions are exposed and, on the other, to state institutions set up to act as insurance carriers for the risks of its constituents. In the field of non-compulsory life insurance—which experience indicates must be sold energetically—they have written little business but have operated at very low cost. Where for reasons of state policy insurance has been made compulsory, it has been argued that the state must set up a carrier in order to provide insurance at the lowest possible cost. Sometimes the state fund has been given a monopoly of its field, as in certain European social insurance systems and in workmen's compensation insurance in some of the states of the

United States. In other cases the funds are competitive. Although they have at times been the victims of political abuse they have as a rule furnished sound insurance at low net cost because of low operating cost. Organization has in general followed the lines of private mutual corporations; save that a government board or bureau takes the place of the board of directors elected by the policyholders.

All insurance carriers except the simplest assessment type have certain common problems. Premium rates must be established for each class and degree of risk assumed; an adequate volume of risks must be procured to give a reasonable stability to the mass; and the company must be safeguarded against adverse selection and too great concentration of risks. Such work is known technically as underwriting. Premiums received in advance of requirement for loss payment must be conserved and suitably invested. Losses must be investigated and settled fairly. In addition every carrier has a large amount of detailed clerical accounting and statistical work calling for an elaborate and highly organized staff.

The problems of rate making and underwriting are closely associated. The economic function of insurance is the substitution of a fixed charge for an uncertain risk by transfer of that risk to a professional risk carrier who may thus acquire mass stability, with a consequent equitable redistribution of the losses and the expense involved. Thus the insurance contract must be a contract of indemnity—life insurance policies are to some extent an exception because of the impossibility of accurately appraising life values—and the rate must be equitable. The test of equity is that the individual insured should so far as possible pay only what would be his proportionate cost in a sufficiently large company composed exclusively of risks identical with his own. Precise equity is probably unattainable, but the aim of all rate making practise and procedure is approximate equity. In a competitive situation countenance by a carrier of substantial inequity carries its own punishment. The general rate level rarely gets high enough to yield more than a modest underwriting profit. If overcharged risks do not seek insurance elsewhere, forming if necessary new mutual carriers, competition of carriers for the "preferred" business augments acquisition expenses and reduces the margin of profit. The losses on the undercharged risks are then unbalanced and the guilty carrier is correspondingly weakened.

Although rates must be made for the future

they can be based only on past experience. Changes in condition, especially in long time trends, must be carefully observed; as, for example, the effect on accident rates and consequently upon costs of workmen's compensation of increasing mechanization of industry. Varying with the type of coverage the making of rates involves statistical study of experience, engineering technique and trained judgment of experienced underwriters. Seldom if ever is even a single carrier's experience broad enough to form a safe basis of rates. Moreover, since competitive bargaining over rates is disastrous, rate making can never be wholly an individual company matter but must always remain a group problem. The safeguards for the public are publicity in methods and in some cases direct or indirect public control. Since the rate must cover expense as well as loss cost, control of rates implies control of expenses. Sometimes, as in life insurance, the return upon invested funds must also be considered; but generally it is not possible to determine underlying probabilities with sufficient precision, and investment profits have been left as the source of return to stockholders.

The acquisition of an adequate volume of business presupposes an effective selling organization. Such organization is usually a blend of three types of systems: direct reporting, branch office and general agency. The first involves direct contact between the head office and the individual members of the sales staff, who may be paid by salary or commission, and is not adapted to complex conditions or to operations extending over a large area. It is used only by the simplest types of carriers operating over a small territory or by larger organizations for the region closely adjacent to the home office. Under the branch office system subordinate offices are maintained at central points in the charge of salaried officials of the company, whose compensation may be supplemented by a share of the profits from the business in their territory. In some cases the activities of the branch are limited to sales efforts and closely associated duties. In others the full range of operations (except investment of funds) is carried on in the branch office and only summary reports are made to the head office. The contacts with policyholders are maintained through local agents or brokers. This form of organization is best adapted to a well established company which has already developed a large volume of business in the territory. Under the general agency system contracts are made with individuals or firms for the



development of extensive territories. The general agent under such restrictions as his contract provides builds up and supervises his own organization of local representatives. He usually finances himself in this work and his profit is the difference between his commission and the sum which he pays local representatives and brokers. In fire and casualty insurance he has at times some powers and responsibility for loss settlements in his territory. In these fields he may have authority also to represent his company in rate making and other regulatory bodies.

Brokers are independent experts offering their services to the public in insurance matters. In marine insurance they are indispensable. While they represent the applicant in negotiations for insurance they obtain their compensation from the companies in a commission on the premiums paid. When they are given policies on order to deliver and collect they become the agents of the companies for that purpose. In life insurance policies are issued only at head or branch offices and the agent merely takes the application and delivers the policy. It is the usual custom in fire and most casualty lines to supply the agent with blank forms authorizing him to issue the policy and to report the facts to his supervising office. In the United States an insurance agency is often combined with a real estate office or other business, although strong efforts have been made by life insurance agents to eliminate the part time agent.

The American business man does not as a rule deal directly with insurance companies. If he is not solicited he usually takes his risk to an agent or broker, leaving to him the selection of a company. In fire and casualty lines agents frequently represent more than one company. Consequently competition between carriers tends to be a competition for those agents who can turn in the most business. This competition centers on rates of commissions, prizes and other allowances to agents and brokers. On the other hand, high commissions tend to bring about overselling, with a consequent high lapse rate; this has proved an unfortunate characteristic of the life insurance business, involving a serious economic waste. Excessive commissions also lead to rebating and other unfair practises which are difficult to control by statute. Moreover even the insurance of property values involves the intangible personal element as an important part of the hazard. All risks offered therefore must be carefully investigated. Where the insurance policy is issued only by head or branch offices, the

company may be safeguarded against excessive hazard by rejection of an application or by offering insurance only on special terms or at increased rates. Where the agent is authorized to issue policies he may be controlled to some extent by instructions. The final safeguard is exercise of the right of cancellation reserved to the company in the policy contract. Brokers are at times able to exert improper pressure upon agents and through them upon underwriters by offering a mixture of good and poor risks and insisting that if these are not accepted in toto the entire business will be placed elsewhere and other good business will be withdrawn upon expiration of the current policies. More or less effective efforts are made through company associations to control such competition. But it is extremely difficult to do so through purely voluntary associations and in some cases, particularly in the United States, it has been necessary to place statutory limits on commissions.

Underwriters must also consider the matter of concentration of risk. Insurance began among traders and in the cities and the chief demand for insurance still comes from the great metropolitan centers, where values are so congested and exposed to common hazards that careful underwriting calls for the retention of relatively small net lines. This involves the fixing of a maximum limit on the amount or "line" which will be carried on an individual risk and often the fixing of supplementary limits for groups of risks which may be exposed to loss from the same event. Hence there is apt to be in those centers an unsatisfied demand for insurance which tends to bring about the establishment of new carriers. These new carriers, however, cannot find an adequate volume of satisfactory business in large cities alone; they seek to diversify and spread their risks by conducting their activities in the smaller communities, where unit values are smaller and the extent of common exposure not so great. Here there is a larger underwriting capacity than necessary, involving the severest competition, which can be held within safe bounds only by wise cooperation, not merely for rate making but also for the regulation of agency relations and other practises. Regulation is exceedingly difficult to maintain unless it is required by law. The history of each branch of insurance in the United States is largely a record of efforts to maintain such organizations. The problem has been made the more difficult by the fact that insurance has been held not to be commerce and is therefore not subject to federal

regulation. The several states have not been consistent in their views, particularly on this matter of combination. At first the theory generally held was that it was an improper restraint of trade and should be suppressed. Many anticompat laws were the result. More recently a better understanding of the business and its problems has led to the repeal of many of these laws and in some cases to the requirement of combination under state supervision. But not all anticompat laws have been repealed, and many carriers are required to conduct their business in one state in a manner which in another would subject them to severe penalties.

In some fields, as in workmen's compensation, it is impossible to fix limits on the risks written, since public policy demands that all employees be insured for the full statutory benefit. It is also desirable at times to accommodate agents by assuming more than the fixed line on an individual risk. Groups of individually acceptable risks may give rise to excessive group lines. The carrier can protect himself in such situations by reinsurance. Although there were sporadic instances of reinsurance in the early history of insurance, the practise necessarily became more widespread as values presented to the carriers for coverage increased either individually or by concentration. The latter half of the nineteenth century witnessed the formation of a number of companies devoted exclusively to reinsurance. Such companies offer either facultative contracts or treaties; most reinsurance is now handled by the latter method, practised also by companies which do not confine their operations exclusively to reinsurance. Under the facultative method the direct writing company is not required to cede and the reinsurance company is not obliged to accept any particular risk. If the reinsurer is offered a risk, however, he is bound to it until he declines. Under an automatic excess treaty the direct writing company is bound to cede and the reinsurance company to accept all excesses falling within the classes stipulated. The treaty usually provides that the excess covered shall not be greater than the net retention of the original company; in order to be fully protected and yet offer its agents the opportunity to cover their clients adequately a direct writing company often arranges several treaties covering successive excesses. As a rule the coverage of the reinsurer is identical in terms with that of the direct writing company and transactions are reported periodically by a tabulation or *bordereau*. Companies writing such risks as workmen's

compensation protect themselves by a reinsurance treaty which covers losses on any risk from a single event in excess of a fixed limit and up to a secondary limit. Under such a contract, the premium for which is a fixed percentage of the total premiums for that kind of risk written by the direct writing company, there is no need of reporting individual risks. The amount of premiums is determined and paid periodically. Reinsurance carriers are subject to sudden increases in the amounts they have at risk in particular locations or on individual risks and must have the means of divesting themselves promptly of dangerous excesses. They must in turn arrange reinsurance facilities; many of these arrangements are international and large risks may ultimately be spread among carriers throughout the world. Young carriers with strong backing and good agency connections, finding the financing of a large volume of business too expensive, frequently arrange for quota share reinsurance of a fixed percentage of all business they write. When a fleet of carriers in a single field, such as fire insurance, is under the same management because of interlocking control, quota share pooling of all the business of each of the carriers is not uncommon. Similar reinsurance pools may be formed by independent carriers operating in the same line.

The public interest requires that in general the insurance policy be a contract of indemnity and from this arises the problem of loss adjustment. This problem is relatively simple in life insurance, since all policies are for fixed values and only total losses are encountered. In other fields it is most difficult to determine the carrier's obligation. The insured rarely reads his policy before a loss, and despite most careful definition therein of the risk assumed and the procedure for determination and settlement of losses he may have an exaggerated idea of his rights and none of his obligations. Overpayment of losses tends to lessen the interest of the insured public in the prevention and minimizing of losses. It not only tends to increase the cost to all policyholders but it invites fraud. The avoidance of overpayment is an obligation of an insurance carrier to its policyholders as a group. But the public renders all too little support to the companies, since it is commonly assumed that insurance companies like public service corporations are fair game. Thus the agents of the company which acquires a reputation for niggardliness and insistence on technicalities find it difficult to carry on. Because of the pres-

sure for liberality, not to say laxity, in loss settlement the adjusters are placed in more or less of a dilemma. In general the policy of representatives of well managed carriers is governed by their estimates of the good faith of the claimant. Where fraud is suspected, every technicality is insisted upon. If misunderstanding of obligations is accompanied by evident good faith, technicalities may be waived and values liberally estimated, so that policy provisions as to disinterested appraisal are invoked only when agreement is apparently impossible otherwise.

The need for conservation of funds during the interval between their receipt as premiums and their disbursement for losses and expenses creates the problem of investment. The normal length of this interval and the time and manner of loss payment are the determining factors in setting investment policies. Both vary materially with the type of coverage.

Fire and marine insurance provide coverage for relatively short intervals. The nature of the potential demand for funds requires that investments be quite liquid, for there may be need of large sums on short notice. Although reserves need be held only for losses in course of settlement, unearned premiums and incurred unliquidated expenses, wise management calls for the accumulation of considerable surplus. Total assets, of which about 85 percent are invested, aggregate in the United States a little less than three times the annual premium income. For most casualty lines the conditions are generally similar; but in some, for example liability insurance, the time required to determine the company's liability in particular cases provides an interval during which cash reserves may be built up out of current income. Large workmen's compensation losses may be incurred through single events, but the fact that benefits are payable over considerable periods of time slightly relaxes the need for liquidity. The reserves for unliquidated losses in casualty and compensation insurance are much larger than in fire and marine.

In life insurance reserves assume the greatest importance. The life insurance contract usually covers a long term of years. But because the premiums remain level throughout the term, the payments exceed the risk cost and the difference, the unearned premium, must be held by the company in the form of reserves which act as self-insurance to reduce the net amount at risk and thus compensate the increasing risk. Life insurance companies thus accumulate vast sums

for investment. Even in the United States, where the proportion of recent business is large in all companies, the assets at the present time exceed five times the annual premium income. If a company has a substantial premium income it has little need for concern with liquidity in investments. Security and regular yield are the prime requisites, the latter by reason of the necessary assumption of interest income in rate calculations.

Investment policies are controlled by the directors of the several companies. Unfortunately these directors, who are usually engaged in other businesses, have not always respected the trustee character of their reserves as guaranties of their contracts but under the guise of investment have indulged in speculation. At times this has been merely bad judgment but there have been instances of improper use of company funds for the advantage of officers, directors and others having a close relation to the companies, and some failures have resulted with loss to policyholders and stockholders. This has led to government regulations and restrictions with respect to investment policies. Theories and methods of governmental interference in investment activity differ widely. At one extreme is the British system of freedom of action with the requirement of full publicity and only minor prohibitions, such as those forbidding investment of life insurance funds in the shares of any insurance undertaking except with the consent of the court. At the other extreme stand Germany and some of the states of the United States, which prohibit definitely some classes of investments and restrict the proportion of funds which may be put in others. Under the German law, for example, stocks to be eligible must be listed on a German bourse and not more than 10 percent of the reserves may be so invested. Intermediate perhaps are those states which leave the field fairly open but require periodic reports and vest in an official of the state authority to require immediate sale of an investment which he does not regard as within the statutory category of first class securities. In general, only such real estate may be held permanently as is requisite for the convenient transaction of business. Other real estate may be taken on foreclosure of mortgages or otherwise in the satisfaction of debts but must be disposed of within five years unless an extension of time is granted by state supervisors. Investment in loans on personal security or so-called commercial paper is not permitted in the United States. Real estate mortgages, subject to

a set ratio to the value of the pledged property, are freely permitted. Government bonds and those of established private corporations are generally allowed. More restrictions are placed upon stocks, especially as investments for life insurance companies. Loans on security of stocks and bonds are generally permitted, at least on such securities as might have been bought. Officers and directors are generally prohibited from being interested except on behalf of the company in any such loans. Annual statements, including detailed schedules, from which the character of the assets and the investment policy may promptly be ascertained, are a universal requirement. Sometimes they must be published; usually they are filed as public documents open to general inspection.

In the United States alone the insurance carriers, with over \$26,000,000,000 assets and \$6,000,000,000 annual premiums, form an enormous collecting reservoir of investable funds. Their influence in the investment markets—for farm and urban mortgage loans, for bonds and stocks—is correspondingly important. In the autumn of 1929 no small amount of the loans of New York banks on stock market securities "for account of others" came from insurance carrier funds.

The qualities desired in life insurance investments—security of principal and fixity of yield for long periods—have caused their distribution over a period of years to vary between urban and farm mortgages, government, railway, utility and industrial bonds, in accordance with the state of the market and prospect of security and yield. Certain life insurance companies have until very recently confined their investments to mortgages, with a large proportion of farm mortgages, and built up extensive organizations for the purpose of handling such loans. The last quarter of a century has seen such an enormous growth in life insurance in the United States that recent discussions have shown some uneasiness regarding the adequacy of the volume of safe outlets for future investments. The need for fire companies to keep their portfolios liquid has caused a frequent turnover of their investments. Large profits have been made in rising stock markets and the companies have at times been suspected of speculating. It may be difficult to draw the line between speculation and proper safeguarding of liquidity in such times, as it is also difficult to find a just basis of valuation of insurance assets. Since bonds are bought by life insurance companies as permanent investments, it is ap-

propriate to value them by the amortization method, a practise which is prescribed in some states. Stocks, however, are not susceptible to valuation on the amortization principle and its application to bond investments of those classes of carriers subject to potentially heavy demands for ready cash is inappropriate. All investments of such carriers are properly subject to a market value test, which creates no little difficulty for supervisory authorities in times of declining markets. In the event of forced liquidation an insurance carrier usually sacrifices substantial but intangible values in agency organization. If the decline is temporary this should be avoided. The problem is to determine when the decline is permanent and whether it is safe to allow time for adjustment.

DISTRIBUTION OF ASSETS OF LIFE, FIRE AND CASUALTY COMPANIES OPERATING IN NEW YORK STATE AS OF DECEMBER 31, 1928

	LIFE COMPANIES	FIRE COMPANIES	CASUALTY COMPANIES
Real estate	1.8	1.8	3.1
Mortgage loans	41.9	3.3	5.1
Bonds and stocks *	39.6	79.5	72.7
Collateral loans	.1	1.3	.9
Cash, premiums in course of collection, accrued interest and like items	4.5	14.1	18.2
Loans to policyholders	12.1		

\* The relation of bonds to stocks is as follows: life companies have relatively little in stocks, the investments of fire companies are divided about evenly, while for casualty companies bonds predominate slightly.

Source: New York State, Insurance Department, *Annual Report of the Superintendent*, vol. 1xx (Albany 1929).

The essentially mutual character of the insurance industry has led to the establishment of numerous associations and to the forwarding of their common interests. The lack of general understanding of the fundamentals of insurance, the large amount of unwise legislation proposed in consequence and the difficulty of opposing it individually have led to intercarrier organizations for lobbying and propaganda. Although actuated by motives of self-interest such propaganda and lobbying have often worked to the public advantage. Carriers and their representatives have sponsored research in fire prevention, accident prevention and life conservation methods. They have cooperated with the law enforcing authorities in the suppression of arson and in other protective measures. High technical capacity is requisite for certain kinds of work re-

quired by insurance carriers; for example, the work of the actuary. While general educational institutions have long furnished the basic ground work for such capacity they have until recently not attempted the necessary specialized training. Associations of actuaries, insurance institutes and similar bodies have tried to fill this need with the encouragement and sometimes the financial support of the carriers. Their publications have furnished material for study, and examinations for admission have provided the incentive to such study. Since the turn of the century such activity has increased markedly, and with the introduction of curricula in commerce in the leading universities a growing number of courses on insurance are being given. Some of these are general, dealing with the economic aspects and services of one or more classes of insurance, principally fire, marine and life insurance. Others are technical, concentrating on actuarial science and fire or accident prevention engineering. As more broadly educated and better trained men become available for the management of the carriers and as the public acquires better understanding of the services and problems of insurance, there will undoubtedly be an even greater efflorescence of the industry.

A. H. MOWBRAY

LAW AND REGULATION embrace three groups of legal provisions. The law of the insurance contract although nominally based upon consent actually prescribes the rights of insurer and insured under a highly technical document with less regard for freedom of the will than for equalization of bargaining power between the parties, for the legal protection requisite to an effective selection and control of risks and for the social desirability of a widespread use of the insurance device. The law of insurance regulation, grounded in the state's police power over private enterprises, is designed to secure the financial safety of insurance carriers, their prompt and easy amenability to suit by the insured and the fairness of their business methods. A third group of laws prescribes the operations of the state itself or of a subordinate governmental instrumentality as a carrier of workmen's compensation and other social insurance. This group is highly developed in Europe but is restricted in the United States to state compensation funds, war risk insurance and minor state insurance schemes.

The antiquity of insurance has long been disputed. If the mutual aid associations of Greece

and Rome—usually recreational societies with incidental death benefits—are included, the origin of insurance may be traced to ancient times. In a sense the family may be considered a primitive type of mutual aid group. At any rate the benefactions of the early societies were apparently without legal sanction and their existence has left no trace upon modern insurance law. If, on the other hand, only the entrepreneur type of insurance organization is included, then insurance originated probably in northern Italy around 1300. The mediaeval Italian contract (*polizza*) was the earliest known form of insurance policy.

The insurance contract being a promise to pay a larger sum (the amount of loss) in exchange for the prior payment of a smaller sum (the premium) was thought at first to violate the canonical prohibition of usury. Hence the early contracts were disguised as pseudo-sales; that is, the insurer agreed to buy the goods from the insured only if they were lost at sea. When the usury ban ceased to be operative and these evasive devices were abandoned, the clumsy forms of early insurance policies (witness the Lloyd's marine policy) made possible their abuse as wagering devices by those who suffered no loss from the catastrophe insured against. Early continental legislation was aimed at this evil. In England marine insurance contracts, probably introduced in the early sixteenth century and first extensively used in the Elizabethan period, came during the early eighteenth century to be used as wagering devices through the insertion of the "P. I." (policy proof of interest) clause, by which the insurer agreed to dispense with proof of the insured's interest in the property insured. English courts, unwilling to create a rule against wagering and tolerant of the protection thus afforded to smugglers, enforced contracts in this form until 1746, when they were declared void by a statute (19 Geo. II, c. 37) which was later reenforced by criminal sanctions [Marine Insurance (Gambling Policies) Act, 1909]. In the United States most courts did not await the advent of legislation before declaring wagering contracts unenforceable. They fashioned from the Puritan and pioneer tradition of useful industry a judge made public policy against wagering.

To differentiate insurance from wagering the courts require an insurable interest, which in its broadest sense is any relation—other than that created by the contract—between the insured and the event insured against, such that the

event if it occurs will cause loss or injury to the insured. A comparison of property insurance and personal insurance reveals marked differences in the application of the Anglo-American legal requirement of insurable interest. In property insurance the insurer's promise is by explicit wording, as in fire insurance, or by interpretation, as in marine insurance, a promise to pay the insured his loss or damage and the insured's interest is an upper limit of his claim to indemnity; in life and casualty insurance the insurer promises to pay a fixed sum on the happening of the insured event.

In Anglo-American law a legally enforceable right or duty in relation to the insured object is requisite in property insurance; in life insurance a relation of mere factual expectation of pecuniary loss, such as the insured's well founded expectation of beneficence during the life of the person insured, will suffice. Moreover while an insurable interest in property must exist, by the weight of authority, only when the casualty occurs, an insurable interest in life need exist only when the contract is consummated.

The recognized insurable interests in property fall into three main groups. In the first, a proprietary interest, ranging in extent from that of the sole owner to that of the lienholder or the lessee, is sufficient whether its basis be legal or equitable. In the second, a contract right, expressly made dependent upon the insured event or upon a contingency directly affected by it, is a valid interest [*National Filtering Oil Co. v. Citizens' Insurance Co. of Missouri*, 106 N. Y. 535 (1887)], although the contingent claim of an unsecured creditor against his debtor's property has generally been regarded as too remote for legal recognition. In the third, legal liability to pay for loss or damage caused by the insured event provides an insurable interest in that event. Thus the bailee of goods has an insurable interest in them because of his liability to compensate the owner for damage to them. A fourth class of interests, represented by an adult son's factual expectation of obtaining a gift of certain property from his father, is recognized in a few cases [*Home Insurance Co. v. Mendenhall*, 164 Ill. 458 (1897)] but is generally rejected as too uncertain and remote under the influence of an early dictum by Lord Eldon [*Lucena v. Craufurd*, 2 Bos. & P. N. R. 269 (1806)]. In general it may be said that expected profits and other economic advantages contingent upon the safety of property are insurable if supported by a legally enforceable right.

Both French and German law maintain a clear distinction between life insurance, in which no insurable interest is required, and the various types of indemnity insurance. For the latter a factual expectation of economic loss, even though unsupported by a legal right or duty, is both necessary and sufficient to constitute an insurable interest. Hence a legal right of no economic value, such as the ownership of property mortgaged for far more than its value, is not an insurable interest. The contrast with Anglo-American law is thus complete in theory. The actual divergence is less because legal rights and economic advantages usually coincide. Expected gains are insurable in French and in German law.

In the Anglo-American law of life insurance a legal relation, such as a woman's right to support from her husband, is a sufficient insurable interest; but so is a mere factual expectation of benefit from the prolonged life of the person insured, such as that of a foster child not legally adopted to continued support from the foster parent. The unsecured creditor has long been recognized to have an insurable interest in the life of his debtor on the theory that payment of the debt is directly dependent on the debtor's earning capacity. Recent legislation in New York has extended group life insurance to meet this need [*N. Y. Laws*, ch. 292, sect. 1 (1929)]. The beneficiary's love and affection for the person whose life is insured have, however, been deemed insufficient in a majority of the states of the United States, partly because the English statute of 1774 (14 Geo. III, c. 48) requires a pecuniary interest.

An adult who procures insurance on his own life may name as beneficiary a person who has no insurable interest. The exercise of an independent choice by the former is regarded as a sufficient prophylactic against wagering by the latter. The growing recognition of this principle in the United States, coupled with the established practise of requiring a signed application for life insurance from the person whose life is to be insured, has restricted the problem of insurable interest to the rare situation in which the beneficiary induces the applicant to apply for a policy upon his life paid for by the beneficiary. The older notion that a continuing insurable interest was necessary as a deterrent to mercenary murder was exploded by a brilliant opinion of Justice Oliver Wendell Holmes upholding an assignment (not contemplated when the policy was issued) of a valid policy to one

having no insurable interest [Grigsby v. Russell, 222 U. S. 149 (1911)]. Yet the requirement of insurable interest has not been relaxed in American law to the same extent as in German law and French law, which seek to counteract the sinister tendencies of wagering on death by requiring merely the consent of the person insured to the original issuance and to every subsequent assignment of the policy. American statutes frequently limit the amounts insurable at various ages on the lives of minors, even where a parent is the beneficiary. Similar restrictions are found in English, French and German legislation.

The peculiar obligation of the insured to act in good faith toward the insurer is recognized in all legal systems. The doctrine of concealment requires that the applicant for insurance voluntarily disclose all known facts which would materially affect the insurer's decision to make the contract. At a time when the English common law of commercial bargaining was pervaded by the ethics of the jungle, Lord Mansfield to foster the business of underwriting as an aid to the expansion of British foreign trade laid down this doctrine in an opinion [Carter v. Boehm, (1766) 3 Burr. 1905] which was substantially copied in subsequent British legislation (Marine Insurance Act, 1906, sects. 17-19). The nullification of a contract because of innocent non-disclosure of a material fact known to the insured was justified by the inaccessibility to the insurer of information about marine risks and by the practise of having expert brokers familiar with the material factors of the risk to represent the insured in negotiations with the underwriter. English law rigorously applies the same rule to other kinds of insurance [Horne v. Poland, (1922) 2 K. B. 364]. American courts have accepted this rule for marine or inland marine risks. Insurance against terrestrial risks is avoidable only if the insured has withheld material facts with intent to defraud. This judge made reform was eloquently defended by the late Chief Justice Taft [Penn Mutual Life Insurance Co. v. Mechanics' Savings Bank and Trust Co., 72 Fed. 413 (1896)] on the ground that the insured is inexpert in estimating risks and that the insurer commonly relies upon independent investigation of the risk.

To Lord Mansfield's influence is also due the English rule that the insured's non-fraudulent misrepresentation of fact, which materially induces the insurer to contract, gives the latter a privilege of avoiding the policy. This doctrine

was accepted in American insurance law, but its range of operation has become restricted. In fire insurance the practise of issuing the policy without a written application from the insured has made the doctrine practically inapplicable. In life insurance the legal effect of innocent misrepresentations by the insured in his application has been diminished by judicial decisions and by legislation. A growing minority of courts hold that the insured should not suffer forfeiture because of honest erroneous opinions about his health, however unqualifiedly expressed. Some statutes prescribe that a non-fraudulent misrepresentation avoids the policy if the fact misrepresented is found by the tribunal to have increased the risk—that is, the probability—of death. Others even restrict the insurer's defense to cases in which the fact misrepresented actually contributed to the death of the insured. The scope and effect of these ineptly worded laws remain yet to be settled.

The codification of insurance law which took place in Germany in 1908 and in France in 1930 has mitigated the harsh consequences of the insured's innocent concealment or non-disclosure. Except in cases of fraud the insurer may not in French law cancel the contract for concealment or misrepresentation discovered after a loss has occurred; the insured suffers only a reduction of his claim in inverse proportion to the premium which would have been charged had the whole truth been told. The German law adopts the view even more favorable to the insured that a fact which did not contribute to the loss or to the extent of the insurer's liability is no ground for defeating the insured's claim except in marine insurance. Cancellation before loss is permitted in French law even when the insured's deception was innocent; in German law, only if the insured was culpable. In the United States a lone New Hampshire statute [Public Laws 1926, ch. 276, sect. 4 (1926)], revising pioneer legislation in this field [N. H. Laws, ch. 1662 (1855)], allows cancellation after loss only if the misrepresentation was fraudulent or if the fact misrepresented contributed to the loss. Otherwise recovery is reduced as under the French law, but the method of estimating this reduction remains obscure.

Oral contracts of insurance are valid in German law and, with some statutory exceptions, in English and in American law but not in French law. The universal practise of insurers, however, save in case of temporary coverage is to issue a formal policy. Since this document is drafted by

the insurer with an eye to his own interests, judicial interpretation favors the insured wherever doubt as to its meaning is possible. The marine policy became standardized in archaic language which left judicial interpretation a wide range of flexibility. The British Marine Insurance Act of 1906 virtually codified this uncouth hulk in its present form along with the encrusted deposits of judicial construction. The paucity of American legislation reveals a laissez faire attitude toward this esoteric branch of insurance.

The amazing growth in the United States of the popular branches of insurance during the latter half of the nineteenth century was accompanied by increasing complexity and length of the terms of the insurance policy. Liberty of contract bred weasel promises, against which judicial interpretation struggled with only partial success. Under the guidance of astute lawyers the insurers redrafted their contracts so as to circumvent decisions favoring the insured. In the competition among insurers, legally unrestricted and actually severe, rates were more important than the terms of the contract; and the insured's inability to understand the latter tempted the insurers to multiply the contractual restrictions upon their liability. Many of the restrictions were motivated by a genuine and not wholly unfounded distrust of the common man's honesty in dealing with insurance companies. Thus many American insurers sowed the dragon's teeth of legislative reform. The crop is still maturing.

One of the most salutary results of this legislation has been the compulsory standardization of policy forms. Although leading New York fire underwriters long sought uniformity of policy provisions for their own protection in the adjustment of losses involving several companies under different policies, only the legislative threat of a standard policy to be drafted by the superintendent of insurance [N. Y. Laws, ch. 488 (1886)] spurred them to produce the New York standard fire policy, a form still prescribed with minor modifications in the statutes of many other states. In New York this form was superseded in 1918 by a shorter form, prepared under the direction of the National Convention of Insurance Commissioners, which eliminates some of the harsh consequences of technical defaults by the insured. An earlier Massachusetts form drafted by legislators is even more favorable to the insured. Despite these legislative reforms American fire policies are still much more

lengthy than those used in England and seem to have more technical loopholes for the insurer than those in France and Germany. Workmen's compensation policies have frequently been standardized under American legislation. In life, accident and health insurance the legislation merely prescribes and proscribes certain types of clauses.

The problem of adjusting the technical requirements of a successful insurance enterprise to the needs, capacities and ethical notions of the common man is not peculiar to the United States, where, however, for reasons which are not entirely clear it has become more acute than elsewhere. Technical requirements appear as conditions of the insurer's promise to pay. Non-compliance with any one of these conditions relieves the insurer of liability. Some conditions have a more important bearing on the risk than others; some deviations from the required condition are serious, while others are merely technical. The English law of warranty was developed by Lord Mansfield on the assumption that the court should not inquire into the purpose of the expert underwriter in inserting the warranty or into the materiality of the breach. This assumption, not wholly unjustified in respect to the bargained for warranties adapted by marine insurers to each particular risk, led to the doctrine that any breach of the warranty as literally construed precluded recovery by the insured regardless of the materiality of the breach. This strict rule has been steadily adhered to by the English courts [Dawsons, Ltd. v. Bonnin, (1922) 2 A. C. 413]. American courts apply it with widely varying degrees of severity.

The extension of this strict doctrine to modern machine made policies poured forth by a central home office and distributed through a myriad of local agents, many of them indifferently trained and only avocationally interested, wrought havoc with honest claims. Attempts to attain an equitable interpretation of the numerous conditional clauses have led to confusion both in judicial decisions and in legislation. Particularly fruitful of litigation are the numerous fire insurance provisions aimed at fraudulent incendiarism by the insured, such as the clause invalidating the insurance if the insured is not sole and unconditional owner or if the insured chattel is mortgaged or if other insurance is procured without written consent of the first insurer. Judicial interpretation of these clauses in accordance with the purpose for which they were inserted has frequently eliminated technical de-



fenses. Some American states have enacted that only a default which is material to the risk will avoid the policy. More drastic legislation in a few states requires the insurer to prove that the breach of condition actually contributed to the loss. The German insurance code excuses the insured's default if he proves that it did not contribute to the loss. The French law of 1930 affords less liberal protection to the insured.

Another embattled safeguard in American law is the limitation upon the local insurance agent's power to bind his company. Either he has no authority whatever to modify the printed forms, as in life insurance, or he has authority to modify only by a written endorsement, as in fire insurance. These restrictions, coupled with the parole evidence rule which excludes proof of contemporaneous conversations not embodied in the written contract, tend to effectuate uniform centralized home office control over multitudes of local agents. Yet the ordinary man accustomed to the looser dealings of local merchants and department stores can scarcely understand why the agent who takes his premium has no power to bind the company by oral statements. The harsh consequences to the insured of this slot machine plan of distributing insurance coverage are mitigated by the twin doctrines of waiver and estoppel. While the American decisions are in hopeless confusion as to the scope and meaning of these doctrines, it may be said that they apply in general where the insurer's agent with knowledge of the insured's default lulls him by soothing speech into a sense of security without properly endorsing the policy. The federal courts rigorously exclude proof of the agent's contemporaneous conversations unless the insured sues in equity to reform the policy. A decided majority of the state courts allow such proof, in a trial by jury, for the purpose of relieving the insured of a breach of condition. Hence the insured's rights will often depend upon whether or not the insurer can seek the beneficent protection of the federal courts. At their best waiver and estoppel impose upon the insurer a duty of serving the individual needs of the insured. At their worst they cloak fraudulent claims or rationalize judicial sympathy and prejudice.

Sympathy and prejudice, particularly of jurors, add to the American insurer's troubles a juridical risk unmatched in England, where judges control juries, or on the continent, where judges alone decide. Had the English statute of 1601 (43 Eliz., c. 12), which sought to take in-

surance litigation from the common law courts by creating a special insurance court, been successful, American law might have inherited a special jurisdiction for insurance cases similar to that of the juryless admiralty courts. As it is, jurors' verdicts against insurance companies reflect the same tendency to effect a redistribution of wealth which is manifested in verdicts against other rich corporations. The introduction into life insurance policies of a clause making the insured's claim legally incontestable after one or two years from date of issuance has proved an unforeseen boon to insurers by opening the doors of the juryless equity court to the timely cancellation of a policy procured by deception.

The growth of social insurance, although more backward in the United States than abroad, has been paralleled by an increasing tendency to make private insurance coverage available for victims of the casualty other than the contracting party. This tendency has been most marked (aside from workmen's compensation insurance) in automobile liability insurance, where statutes which perfect the injured person's claim against the insurer of the automobilist who injured him have been upheld by the Supreme Court on the ground among others that liability insurance tends to make the driver more careless and thus enhances the danger to other persons [*Merchants' Mutual Automobile Liability Insurance Co. v. Smart*, 267 U. S. 126 (1924)]. Quasi-negotiable marine insurance certificates protecting all persons who become interested in shipments of goods have facilitated export trade, and fire insurance obtained by bailees on goods "held in trust or on commission" serve a similar purpose in inland trade. While American and English laws still treat the ordinary fire policy as a "personal" contract which does not follow the transfer of the property, in France and in Germany automatic coverage of the transferee, at least for a brief period, is now the rule. The use of life insurance to protect the widow and children of the breadwinner has been recognized in numerous American statutes which exempt the proceeds of the policy in the hands of the beneficiary from the claims of the insured's creditors, even in case of bankruptcy. This is only another example of the way in which insurance law transcends the bounds of the individual contract. Another tendency away from an individualist economy is seen in the growth of mutual insurance carriers.

Legislative and administrative regulation of insurance enterprises dates from almost the be-

ginning of modern commercial insurance. The Barcelona Code of 1435 prescribed brokerage fees, and a Florentine law of 1523 established official control of rates and of policy forms. Regulation of reserves and investments were introduced by nineteenth century American legislation. Not until the twentieth century did English or continental legislation approach that of the United States in strictness, and today only Germany (law of 1901, with drastic amendments in 1931) exercises a comparable degree of supervision.

Four types of state control have been used. The state may prescribe the initial qualifications of a new enterprise, as in the early special incorporation statutes of Massachusetts. The state may require annual publication of financial statements on the assumption that the insuring public will thus be enabled to choose the more reliable companies. This device was unduly relied upon in early American legislation. The state may establish norms for the subsequent conduct of the enterprise, backed by criminal penalties or the threat of judicial receivership. Finally, without abandoning any of these devices the state may establish a continuous official supervision with summary administrative powers. This last stage has been attained in every state of the United States by investing a single official (the insurance commissioner or superintendent of insurance) with these powers. In Germany and in France advisory committees representative of insurers, insured and actuaries participate in the official control.

In England the attempts of the Privy Council from 1574 to 1576 to regulate marine insurance rates proved abortive. Insurance enterprises as such were not subjected to regulation of their financial arrangements until 1870, when life insurance companies were required to make initial deposits of £20,000 each and to file financial reports annually with the Board of Trade (33 & 34 Vict., c. 61). The same or similar requirements were extended in 1907 and again in 1909 to other types of insurance companies. The Assurance Companies Act of 1909 (9 Edw. VII, c. 49) for the first time brought individual underwriters, such as the members of Lloyd's in London, within the scope of such regulations; yet the beneficent autonomy of those individual underwriters' associations, approved by the Board of Trade, was preserved by exempting their members from requirements other than the deposit of £2000. The vexatious problems of fraternal societies were dealt with more compre-

hensively and effectively by the Friendly Societies Act of 1896 (59 & 60 Vict., c. 25) than by comparable American legislation. The Industrial Assurance Act of 1923 (13 & 14 Geo. V, c. 8) confers summary inquisitorial powers on the industrial insurance commissioner and attains continuous administrative supervision. Thus English legislation better safeguards the interests of the proletarian policyholder than of the well to do. In the United States the converse has generally been true. On the whole regulation in England has been mild.

The American insurance commissioner or superintendent has extensive and flexible powers over the conduct of insurance enterprises. He may refuse to issue or revoke an insurance company's license, and the unlicensed insurer becomes subject to heavy penalties if it continues to do business. The grounds of refusal or revocation are sometimes specifically prescribed by statute; but in other instances a blanket provision is added, such as "whenever in the judgment of the superintendent of insurance it will best promote the interests of the people of this state" [N. Y. Laws, ch. 9 (1913)]. Grounds for the revocation of agents' licenses are more narrowly prescribed. In those few states which authorize the licensing of insurance brokers revocation is usually authorized on the ground of untrustworthiness or incompetence. Another important administrative device is the commissioner's power to demand the privilege of making an extensive examination of the books, securities and affairs of local enterprises, commonly at the expense of the enterprise examined. To ascertain the financial safety of insurance companies he is authorized to evaluate their assets and liabilities and to approve or disapprove their investments. His powers over policy forms are somewhat less discretionary and apply only to a few types of insurance. Only in the exercise of his power to prescribe rates, usually limited to fire and to workmen's compensation insurance, does he ordinarily hold a formal hearing.

Elastic discretion and inadequate procedural safeguards have led to some abuses, less frequently through corruption than through official zeal to stretch the scope of regulation beyond the terms of the statute. Thus the tendency to enforce by unauthorized administrative sanctions the payment of private contract claims against insurers or against brokers is an encroachment on the judicial prerogative of determining the validity of such claims. While judicial remedies against the commissioner are available to check

these and other bureaucratic abuses, they are sparingly invoked by insurance companies because of the resultant unfavorable publicity and official ill will.

It was early held that the regulation of interstate insurance business is beyond the powers of Congress over interstate commerce [Paul v. Virginia, 75 U. S. 168 (1868)]. Hence each state enforces its own legislation as to both domestic and foreign enterprises. The power of the state to exclude arbitrarily an insurance corporation of another state has, however, been denied by the Supreme Court [Fidelity & Deposit Co. of Maryland v. Tafoya, 270 U. S. 426 (1926)]. The burdens imposed on interstate insurers by forty-eight autonomous officials and some ten thousand sections of insurance law are lightened by extralegal influences. Imitation of the legislation of other states, notably of New York, has lessened divergences. The National Convention of Insurance Commissioners, organized in 1870, a gathering of state officials which meets twice yearly, has conducted numerous investigations of their common problems, drafted important uniform legislation and standardized administrative practises, especially in regard to the voluminous annual reports required of insurance companies. By expediting the interstate exchange of official examiners' reports it has decreased the expense to the companies of multiple supervision and relieved the smaller state insurance departments of tasks for which they are inadequately manned.

The constitutional limits of the state's police power over the insurance business are not clearly defined. Since the Supreme Court upheld the regulation of fire insurance rates on the ground that competition was practically ineffective [German Alliance Ins. Co. v. Lewis, 233 U. S. 389 (1914)], the insurance business has been in some measure "affected with a public interest." Although insurance companies are forbidden to discriminate unfairly between applicants for insurance or to give rebates to those whom they choose to insure they are not like public utilities under a legal duty to serve all who apply. No showing of public necessity or convenience is prerequisite to the incorporation or licensing of a new insurance enterprise. Insurance is in the twilight zone of state control.

State supervision of insurance has passed the experimental stage. In the United States its preventive work has well protected the insuring public from commercial enterprises inadequately capitalized or fraudulently managed. Its

constructive work has effectuated important changes which the insurers would not or could not bring about voluntarily. A notable example is the establishment of the compulsory reserve and of the life policyholder's right to a share of the reserve fund, the cash surrender value, through the efforts of Elizur Wright, commissioner of Massachusetts, after the middle of the nineteenth century in 1854-61. Here as in other constructive efforts the state bureaucracy has served less by invention than by selecting its norms from among those professional standards and business mores which are deemed to have the greater social utility.

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See: RISK; SPECULATION; FRATERNAL ORDERS; FRIENDLY SOCIETIES; MUTUAL AID SOCIETIES, SOCIAL INSURANCE; GOVERNMENT REGULATION OF INDUSTRY; INVESTMENT; CORPORATION TAXES; MARINE INSURANCE; FIRE INSURANCE; LIFE INSURANCE; CASUALTY INSURANCE; BONDING; AGRICULTURAL INSURANCE; AUTOMOBILE INSURANCE; HEALTH INSURANCE; CREDIT INSURANCE; COMPENSATION AND LIABILITY INSURANCE; WORKMEN'S COMPENSATION; BANK DEPOSITS, GUARANTY OF; GROUP INSURANCE.

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INSURGENCY, POLITICAL. Rebellion against authority is far from rare. It is attempted in various forms and for various motives and has various consequences. In international law the term insurgency is used to describe an internal political revolt which the withstanding state does not wish to recognize as war and which other states are not ready to recognize as belligerency (see INSURRECTION). The consequences are of interest to international lawyers but the situation arises with relative infrequency.

The term insurgency is more often employed in domestic party politics. There have doubtless been insurgents wherever authority has been asserted over groups, but the word was first used to describe those Republicans who in 1909 revolted against the party leadership in the House of Representatives, dethroned Speaker Cannon and reformed the rules of the House.

The 1909 movement was not the first movement of its kind in American party history, for insurgency although not called by that name had raised its head in 1872 and in the 1880's and 1890's.

Dissatisfaction with the first Grant administration, lack of confidence in the leadership of

the Republican party and a desire for a different policy toward the South led to the movement of liberal Republicans in 1872. The leaders of these dissentients were distinguished men—Carl Schurz, Charles Francis Adams, William Cullen Bryant, Lyman Trumbull, Whitelaw Reid—who had outstanding ability and possessed the public confidence. A liberal Republican convention nominated Horace Greeley for the presidency and the nomination was endorsed by the Democrats at their convention in Baltimore. Grant was elected and, since his second administration was no more successful than the first, the liberal Republicans continued their irregularity. After Hayes was nominated most of them became regulars. In 1884 independent Republicans supported Cleveland on the ground that Blaine was an unfit leader. They were called mugwumps, an epithet which had been used to describe the liberal Republicans of 1872 but which did not gain currency until it was used as a name for the influential Republicans—again including Carl Schurz—who bolted their party twelve years later. During Cleveland's administration there were "silver Democrats," and in 1896 "gold Democrats" were unwilling to accept Bryan as the nominee of the party. They put up their own candidate, but he polled only 130,000 votes.

These insurgent movements were connected with presidential nominations and campaigns. The movement of 1909 began on the congressional terrain. Its principal objectives, which were attained in March, 1910, by coalition with the Democrats, were the exclusion of the speaker from membership on the Committee on Rules and the election of the committees by the House instead of their appointment by the speaker. Once these objectives had been attained, the movement in all probability would have had few further immediate results had it not been for the attempt made by President Taft to discipline the insurgents and for the split between President Taft and Roosevelt. The insurgent Republicans were prominent in the Progressive party of 1912, but by 1916 most if not all of them were again regular. Some of them became irregular again when Senator La Follette ran for the presidency on a third party ticket in 1924.

The term insurgency is still used to describe "progressive" Republicans who are out of tune with the regular leadership. In recent years congressional insurgency has largely been confined to the Senate, where its objectives have been chiefly legislative and inquisitorial. The con-

gressional investigations of the Harding and Coolidge administrations were largely brought about with the support of the insurgents. It is interesting to note that the insurgent movement of 1909-10 and recent irregularity in the Senate have been led by representatives and senators from the west. This is natural enough, for the leadership of both American political parties still derives from the older sections of the country. It is to be expected that the newer sections will send to Washington representatives whose opinions and interests are not in rapport with the opinions and interests of the eastern and middle western states.

The Democrats have been spared—or have not been blessed—by an insurgent movement similar to that of 1909. One reason is doubtless the fact that the Democrats are usually in the congressional minority. Insurgency seems to be encouraged when a party has a majority, for then leadership is highly prized—so small a value is placed on a vigorous party opposition in the United States—and tends to bring forth the countervailing tendency of insurgency. It would be accurate to say, however, that dissentient groups in the Democratic party have been just as frequent as dissentient groups in the Republican party; but their identities have been inchoate and their activities have been temporary and not too notorious.

The indigenous character of American party development, with the parties extragovernmental, elaborately organized, under irresponsible leadership and made up of loose federations of state or sectional parties, encourages factionalism. Insurgency can be an avenue to political prominence. A larger percentage of insurgents than of regulars can become known to the country. Irregularity is more interesting than regularity, while it is not unlikely that there is a higher percentage of able men among the revolters than among the regulars. Unlike politicians on the continent, American insurgents cannot use their irregularity to obtain cabinet posts or the one great prize in American politics, the presidency. American political parties are inclined to select only "safe" men for their highest posts. Publicity, in short, is the principal means and perhaps the chief end of political insurgency in the United States. There is no possibility of influencing the tenure of a government or of persuading a parliament to withdraw its confidence from the executive. A revolt can accomplish little more than to force the regular organization to modify its policy. Or it may add numerical

strength to the minority party so that the majority group becomes a minority. Finally, the price of acquiescence may be greater legislative preferment for the revolvers—consideration of measures which they espouse or better places in the committee hierarchy of Congress.

It is interesting to note that representatives and senators who insure in Congress are infrequently irregular in presidential elections and that their temporary independence rarely means even temporary abandonment of the party label. Since the insurgents are dominant in their local party organizations—for example, Senator La Follette always controlled the Republican party machine in Wisconsin—the only discipline which the national party may attempt is a withdrawal of federal patronage or a threat of exclusion from important congressional committees. These sanctions may be boomerangs, as President Taft discovered. If the party majority is small, the congressional leaders may need insurgent votes to “organize” Congress; or the party leaders may simply conclude that discretion is the better part of valor. In these cases discipline is not attempted.

Complaint is sometimes made that the irregular senators and representatives from smaller states have prominence and power disproportionate to the size and influence of their constituencies. There is little merit in such a suggestion; for an irregular senator sent to Washington by a majority of the votes of a small state may be an effective representative of sizable minority opinions in large states. In Congress the legislative hopes of insurgents or progressives or irregulars are made more easily realizable by the bipartisan character of the bulk of congressional legislation. As is frequently pointed out, few important laws are driven to the statute book by the advocacy of one party in the face of opposition by the other party. Congressional majorities are usually bipartisan and under such circumstances a bloc of representatives or senators, anxious for more progressive measures than the regular majority leaders are willing to sanction, can be extremely powerful.

In Great Britain and on the continent political insurgency is far from unknown, but because of different governmental structures and party organizations it has disclosed different tactics and objectives. In Great Britain revolts against party leadership have had different strategy and objectives. For example, Liberal dissentients known as Adullamites and headed by Robert Lowe and Lord Hugh Grosvenor opposed on

principle Gladstone's Reform Bill in 1866 and were largely responsible for the defeat of his government. In much the same way twenty years later the Irish question created irreconcilable minorities in both the great English parties. But this defection was so extensive and so continued that its participants were not in the same category with the occupants of the cave of Adullam.

A better English illustration is perhaps the Fourth party, which indeed had hardly more than four members. The two ablest were Arthur Balfour and Lord Randolph Churchill. Organized in 1880 after Gladstone had won his Midlothian campaign and when the leadership of the Conservative opposition in the House of Commons might have been more vigorous and effective, the Fourth party made its members far more prominent than they could have been if they had remained regular Conservatives. Partly because Gladstone's temperament made him easy to bait—and the brilliant Fourth party men knew how to do it—they were far more annoying than were the leaders of the official opposition. There was in this insurgency slight divergence on principle. The consciences of Balfour and Lord Randolph were not bothered by what they conceived to be mistaken Conservative doctrine. They wished to make their mark in Parliament quickly; and insurgency was the highly successful method that they employed. All four members of the party were given office in Lord Salisbury's government and their insurgency was at an end.

On the continent, where most cabinets are coalition cabinets and parties are multiple, irregularity is frequently the shortest road to ministerial preferment. This is not to say that doctrinal differences do not exist. Splits in the French Socialist party, for example, proliferated a single organization into several, and in other continental countries the same phenomenon has been responsible for the post-war birth of communist parties. But what may be called insurgency frequently occurs in France because of reasons which to the foreign observer seem purely personal. To the intimately informed the nuances of doctrine may be perceptible, but to the outsider it frequently seems that a group of deputies withdraws from their previous group and organizes their own group solely for the purpose of prominence and profit. Since a French cabinet must pick its members so as to secure the support of a majority of deputies, a newly organized group may be strategically

placed. One or two of its members may receive the accolade of office solely because of their separate organization. Hence revolt against authority can be made a stepping stone for the revolt.

When parties are elaborately organized and under strict discipline, insurgency is a more serious and less promising manoeuvre. If the members of the Fourth party had been less able and less well connected they would have been punished by ostracism. On the other hand, insurgency within a well organized party may continue for a time but may have to result in separation. The difference may be tolerated if it relates to a matter of strategy—for example, as to whether the members of the French Socialist party should participate in forming a bourgeois government—but when the difference is doctrinal cleavage is likely.

Insurgency of course manifests itself in non-political groups in churches, educational institutions, trade unions and so on. Sometimes it is little more than a matter of personal cleavage. The insurgents desire the positions which the leaders hold. In other cases there are differences of principle. The clash between modernists and fundamentalists is one of doctrine although it may be exacerbated by the clash of personality. In some trade unions—notably the textile unions, whose membership is largely made up of immigrant races—insurgency is communistic. The essence of statesmanship, whether it is political or industrial, is to detect dissident movements before they become formidable, to scotch them or to put their leaders in office and thus encourage them to become regular. It is the essence of leadership also to remember that while some men are born insurgents and some deliberately seek to be insurgents, some have insurgency thrust upon them.

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See: PARTIES, POLITICAL; MACHINE, POLITICAL; BLOC, PARLIAMENTARY; FACTION; CAUCUS; INDEPENDENT VOTING.

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**INSURRECTION.** While the term insurrection as used by international lawyers and jurists to refer to a particular legal situation has a reasonably precise meaning, its use by historians, political scientists and sociologists is unfortunately characterized by extreme ambiguity and confusion. It is loosely used along with revolution and rebellion to refer to an armed resistance to government. In general an uprising directed toward a radical modification of the existing political or social order throughout the whole territory of a state is referred to as a revolution, while the word rebellion is more frequently confined to efforts on the part of a portion of a state to throw off the authority of the remainder. Insurrection usually refers to movements smaller in scope and purpose than those described by the other terms. But obvious exceptions come to mind at once. The American Revolution was in reality a rebellion. The insurrection of the Paris Commune of 1871 was an abortive social revolution, while the Great Rebellion in England in the seventeenth century was a temporarily successful revolution. The Whisky Rebellion in the United States and the Sepoy Mutiny in India were both insurrections.

Whether the distinction between types of resistance to government be based upon scope and extent, purposes or methods, no sharp line can be drawn between the three terms. It may be suggested, however, without departing from common usage that the term insurrection should be limited to the initial stages of movements of opposition to government which take the form of armed violence as distinguished from non-violent non-cooperation or passive resistance. Such armed movements may develop into what may better be described as rebellion or revolution, depending upon whether they are directed toward territorial secession or toward the overthrow of a government throughout a state. The use of the more general terms is justified, however, only when the movement attains sufficient magnitude to require the use of a substantial portion of the armed forces of the established government for its liquidation and when it has definite political objectives beyond mere negative resistance to constituted authority. In this

sense an insurrection may be thought of as an incipient rebellion or revolution still localized and limited to securing modifications of governmental policy or personnel and not as yet a serious threat to the state or the government in power.

Considered as a phenomenon of social and political dynamics insurrection involves the use of armed force against the established government in order to achieve public purposes which cannot in the opinion of the insurgents be achieved by pacific means. Motives may be private but insurgents almost always tend to rationalize them in terms of public good, and the ensuing struggle is for control of the machinery of the state. Pacific means of attaining political objectives are adequate so long as the contestants for public office and political power envisage their particular interests as phases of the general interest or are at least prepared to subordinate them to the prevalent conception of the general good as represented by those in authority. When this is no longer the case, acquiescence is no longer forthcoming and armed action is likely if circumstances offer hope of success. In other words, the "constitutional consensus," which normally furnishes the frame of reference within which the political process continues peaceably, breaks down under the tensions between the hostile and irreconcilable groups into which the body politic has become divided. Discussion, bargaining and compromise are then replaced by coercive violence in the clash of rival wills to power. Whether the ensuing insurrection develops into factional warfare, secession, political overturn or social revolution depends upon the lines of cleavage between the conflicting forces. In every case a resort to armed resistance emerges out of a politico-social situation in which irreconcilable interests and programs are adhered to in such uncompromising fashion that the risks of an open trial of strength seem less dangerous to the contestants than continued acquiescence in a situation which is regarded as intolerable.

The effectiveness of insurrection as a political weapon can scarcely be measured in abstract terms, since the variables in each instance are too numerous to admit of prediction and insurrectionary movements are frequently carried forward by their own momentum into rebellion or revolution. Governments threatened by insurrection usually resort to armed repression, the success of which obviously depends upon the fortunes of war, the numbers and organization of the insurgents and the attitude of groups

hitherto neutral. Concessions may sometimes be made to forestall armed action and to weaken the ranks of the rebels. If an outbreak occurs and is put down, the treatment meted out to the defeated groups will depend upon the attitude adopted by the government in power toward their purposes and their capacity for creating future disturbances. Where the line of force is drawn between geographical sections or parties or factions, with basic economic and social interests not involved, the defeated insurrectionists are likely to receive only mild punishment and may even secure a complete or partial redress of grievances. Where the struggle is a true class war, repression is likely to be savage and merciless, as in the Red and White terrors of post-war Europe. The importance attached by the contestants to the interests at stake conditions the attitudes of the contending groups toward each other.

In international law the concept of insurgency has recently been accepted as a basis for defining the legal rights and obligations of states in public disorders more serious than mob violence and less serious than true civil war. Outside states may legitimately take cognizance of the existence of a condition of insurgency when their interests are affected. In 1895 President Cleveland recognized the existence of a state of insurgency in Cuba. Similar action has frequently been taken with regard to civil disturbances in other Latin American states. Such action confers no special rights upon the insurgents, but merely recognizes a state of fact and warns nationals of the state taking the action that the situation warrants more vigorous enforcement of local neutrality laws. The question of whether the state in which the disturbance is taking place is responsible for injuries to aliens resulting from insurgency has usually been answered in the negative when due diligence has been observed in the protection of foreign lives and property and the injuries result from *force majeure* which the *de jure* government, despite its best efforts, has been unable to suppress. Occasionally, however, the United States and some European powers have attempted to enforce liability upon weaker states in which insurrections are chronic. Interference by outside states on behalf of the insurgents is contrary to the principles of international law. The act passed by the United States Congress in 1912 authorizing the president to prohibit the export of arms or munitions of war to American countries in which "conditions of domestic violence exist" has under the provision giving



the president power to prescribe limitations and exceptions to the operation of the law been frequently applied to hamper insurgents in Latin American countries. The Sixth International Conference of American States in 1928 adopted a convention prohibiting all traffic in arms with insurgents. If an insurrection leads to persistent and widespread hostilities, outside states may recognize the belligerency of the insurgents, as did Great Britain and other European states in the American Civil War. In this case the local state is relieved of all responsibility for insurgent acts and the usual principles of the international law of war and neutrality apply.

FREDERICK L. SCHUMAN

*See:* FORCE, POLITICAL; VIOLENCE; REVOLUTION AND COUNTER-REVOLUTION; CIVIL WAR; BELLIGERENCY, NEUTRALITY; EMBARGO; DE FACTO GOVERNMENT; TREASON; RIOT; MUTINY.

*Consult:* Arias, Harmodio, "The Non-Liability of States for Damages Suffered by Foreigners in the Course of a Riot, Insurrection, or Civil War," and Goebel, Julius, "The International Responsibility of States for Injuries Sustained by Aliens on Account of Mob Violence, Insurrections and Civil Wars" in *American Journal of International Law*, vol. vii (1913) 724-66, and vol. viii (1914) 802-52; Eagleton, Clyde, *The Responsibility of States in International Law* (New York 1928) p. 138-52; Moore, J. B., *A Digest of International Law*, 8 vols. (Washington 1906) vol. i, sect. 74, vol. vi, sects. 1044-48; Garner, J. W., "Responsibility of States for Injuries Suffered by Foreigners within Their Territories on Account of Mob Violence, Riots and Insurrection" in *American Society of International Law, Proceedings*, vol. xxi (1927) 49-63, and discussion by H. R. Coffey, p. 63-66

INTEGRATION, INDUSTRIAL. *See* COMBINATIONS, INDUSTRIAL.

INTELLECTUALS are persons possessing knowledge or in a narrower sense those whose judgment, based on reflection and knowledge, derives less directly and exclusively from sensory perception than in the case of non-intellectuals. Although moral or aesthetic development is often associated with intellectualism, these qualities stem from other roots and are not indispensable components. While intellectuality is not, as Schelling and others have held, necessarily productive, those who have merely accumulated knowledge are not true intellectuals. The scholar must possess priestly qualities and fulfil priestly functions, including political activity. His knowledge, as Fichte says, "should be truly applied for society's use; he should get people to feel their true needs and acquaint them with the means of their satisfaction" (*Werke*, vol. i, Leipsic 1908,

p. 258). While the most typical intellectuals are academicians or instructors in schools of higher learning, it would be wrong to define intellectuals in terms of academic examinations; while they are necessarily educated, the education they possess may vary widely in quantity and type from case to case. The "half" educated, the "eternal student," even the self-educated man—all are intellectuals in so far as they assimilate the materials of knowledge and employ them in mental labor, in so far as they are vocationally concerned with things of the mind.

Intellectuals play a special role in social life. In general they tend to revolt against the existing order wherever it hinders their freedom of intellectual activity. Their demand for freedom of teaching, freedom of study, university autonomy and freedom of student activities has played a prominent role in the development of movements of revolt in Europe and is beginning to be of some importance in the United States. Furthermore since their intellectual pursuits bring them into contact with theories and information not available to others, they often come to regard the social order in which they find themselves as anachronistic with reference to ideas and institutions developed elsewhere or at other periods. Hence they acquire an intellectual motive for urging change; this assumes a patriotic coloration when they feel that the change they advocate is a national need. These attitudes were typically expressed by the Russian Decembrists and the westernists in general in their struggle against czarism. A characteristic influence over general developments was exercised by the intelligentsia in eighteenth century France. The best representatives of the bourgeois intelligentsia from Rousseau to Voltaire were absorbed in "philosophy" rather than in economics or politics. Devoted to generalizations and the elaboration of logical constructs, they came more and more to champion "pure principles." Thus largely without conscious intent they served the French Revolution, seriously weakening the political resistance of the ruling classes by undermining their confidence in the good of their cause. The revolution itself was swept by intellectualism, especially that naive optimistic belief which the Jacobins communicated to the masses—that since evil in men was the effect of bad state institutions and their ideologies, a change in the form of the state and the work of the guillotine would restore "natural good" to the hearts of the survivors.

The thesis that intellectuals champion revolu-

tionary ideas must, however, be taken with a grain of salt. In most historical cases only a section of intellectuals has been involved, as, for example, an age group or a professional group. While the French *Jeunesse des Écoles* was radical, there was no corresponding solidarity among the professors. German literary men in the first half of the nineteenth century opposed government institutions and state power and were more patriotic, more social minded and more radical than the more or less well to do official professors and bureaucracy with the same intellectual training. In Paris in 1830 and 1848 and in Vienna in 1848 university students formed revolutionary legions, and the German *Burschenschaft* and the Russian students have also been more or less revolutionary; but it is beyond historical proof and contrary to knowledge of the behavior of comparable groups to maintain that this was true of all the students. While in France the political and historical sciences, whose most prominent representative was Louis Blanc, served the Revolution of 1848, Proudhon correctly maintained that the literary intellectuals handicapped it by diverting the passions of the masses into romantic and erotic channels. In England the participation of university trained men in socialist politics has never been extensive, except perhaps in the Chartist movement and in the Fabian Society, a study group rather than a political party. This has been a consequence of the fact that in England politics as a profession was and in part still is the privilege of people of means (election contests are extremely expensive) who have achieved a career or who because of their aristocratic birth need none. In the United States intellectuals, who are usually not well off economically and who are socially overshadowed by business men and without *esprit de corps*, are largely dominated by utilitarian values and only a limited number are to be found in the leadership of unions or radical political parties.

The theory that the intelligentsia has an immanently revolutionary character is then not in accord with the facts. Differing among themselves basically in origin, character, training and theory, intellectuals are the officers and subalterns of all arms and of all armies. In the politics of any period the parties of revolution, of continuity and of reaction have all been in their hands, and thus in a sense their efforts have negated each other.

Intellectuals have played important roles in stimulating national consciousness, the basis of

their attitude being some form of the idea that the nation has a mission. This mission can be accomplished only with the aid of an extensive intellectual staff of mythologists, archaeologists, poets and the like, although the result of their work corresponds somewhat with an existing popular feeling. The late Middle Ages, the Renaissance and the Reformation were to some extent colored by the nationalism of intellectuals whose professional interests as a consequence of the rise of the national languages for court and literary use tended away from the universalism of Latin and the papacy. The struggle against ultramontanism had not only a religious, social and politico-economic basis but also a basis in the desire of intellectuals to strengthen their position in their respective countries.

During the nineteenth century in Europe intellectuals cultivated the nationalist idea, kept it alive during difficult times and led it to victory over all obstacles. Today students are among the foremost leaders of nationalist movements in Asia and Africa. While crude mass nationalist reaction against foreign rule has always played an important role, the struggle of nationalist political movements for power has had to await intellectual leaders to shape ideas, to spread them among ever widening masses and to stimulate popular response. It may be said that without students, professors, journalists and writers no modern national state could have come into being. More recent language conflicts in Europe have had important roots in the fact that considerable pecuniary interests of publishers, editors, authors and journalists are bound up with the maintenance and advance of any national speech. These persons are natural defenders of the language and its literary monuments with which they happen to be linked emotionally as well as professionally. In countries of several nationalities, as, for example, the Austrian monarchy, there arose out of such circumstances national conflicts over schools, universities and government offices. Intellectuals had to fight for their nationality as for life, for an Italian savant without an Italian university or a Czech poet without a popular Czech school system had little significance. In some situations nationalist intellectuals, hampered by cross currents of economic interests in their efforts to organize broad masses of workers or peasants on the basis of a national culture and to fight a nationalist struggle, come to advocate a socialist society as the only one which can solve the nationalist problem.

The World War, at least in its literary expressions a struggle among national cultures, mobilized intellectuals by placing upon them the burden of lower and intermediate army leadership and by using them to elaborate a rationale for the war. In this task strong emotion was achieved by intellectuals at the expense of pure science. They turned out many literary nationalist manifestoes, such as *Es ist nicht wahr* (1914), in which German scientists proved themselves thoroughly uncritical and platitudinous, and the *Manifeste du parti de l'intelligence* (1919), issued by fifty-seven French intellectuals, chiefly litterateurs, advocating a national policy of force. The Italian official professorial staffs in 1915 justified by irredentist ideals Italian participation in the World War.

In many central and east European countries, especially since the war, growing numbers of intellectuals and students participate in anti-semitic movements. While the basis of antisemitism has often been ethical and sentimental, the fact that a disproportionate number of Jews are economically able to acquire advanced education and to pursue learned professions has played a major role in creating these movements and in spreading them through academic circles. Jews are less numerous and more assimilated in England, Italy, the smaller countries of northern and central Europe and France; these countries have been relatively free from this attitude despite the fact that some faculties (business law, mathematics, economics) are largely manned by Jews. Although academic antisemitism is without political form in the United States it is not uncommon, and most faculties of non-professional schools, especially in the more important universities, are practically closed to Jews. The *numerus clausus* for Jewish students applied openly in some central and east European universities is achieved in many American institutions by administrative action.

The greatest contribution of intellectualism to a practical movement is Marxism. By transferring socialism from the utopian to the scientific level of thought and by demonstrating the existence of an objective, economically inevitable trend toward socialism it intellectualized the modern labor movement, endowing proletarian interests with the ethical aspects of a universal cultural movement, and made it conscious of a "scientific function"—bearing the germ of a new society.

This achievement, which has had such boundless political consequences, was largely the work

of bourgeois intellectuals; indeed it may be stated as a historical law that class movements are led by members of the classes against which they are aimed. Marx correctly said in the *Communist Manifesto* that it was the tragic fate of the bourgeoisie to be the teacher of its economic and social arch-enemy, because it is compelled in its constant battles ("at first with the aristocracy; later on, with those portions of the bourgeoisie itself, whose interests have become antagonistic to the progress of industry: at all times, with the bourgeoisie of foreign countries") "to appeal to the proletariat, to ask for its help, and thus, to drag it into the political arena," supplying it with a weapon, in the form of education, which is destined to be turned against the teacher. In addition the bourgeoisie becomes the feckless master of the proletariat when as a result of constant interclass contact members of the bourgeoisie, especially many intellectuals, are detached and use their knowledge and spirit to inspire the working masses to struggle against existing conditions.

Intellectual socialists are of the following main types: ethicists, armed with social conscience; scientists, convinced of the necessity for or the practicability of socialism; demagogues; quacks, selling confused ideological merchandise; men of the Coriolanus type, who desire revenge for personal misfortune, including in a depersonalized, class sense the so-called intellectual proletariat, the declassed; and satiated rich men, philanthropists or *grands seigneurs*. These types fall into two principal categories: "missionaries" and "interested parties." There are of course innumerable mixed types. Sometimes special groups of intellectuals tend by virtue of their particular experiences to drift toward socialism more rapidly or more generally than the whole body of their fellows. For example, the percentage of intellectual Jews in socialist ranks is relatively large. This fact may be explained by the analytical and critical qualities which the social experience of the Diaspora has bred in the Jewish mind. In pre-war central and eastern Europe furthermore social oppression, especially as expressed in the *numerus clausus* in the universities, when it did not divert the ablest Jews into business caused them to suffer keenly at the hands of prejudiced authority. In addition many were forced to study abroad, an experience which accentuated the comparative looseness of the Jew's connection with the traditions of the peoples among whom he dwelt and laid an emotional basis for internationalist ideology. Other

groups of intellectuals who have suffered from similar discriminations have shown comparable trends to radicalism of varying degrees; such are aliens, religious dissidents and, latterly in the United States, Negroes. In the case of the Jewish intelligentsia their international relations and relationships and frequently an element of Hebraic Messianism contribute to their radicalization.

Ethically the alliance of bourgeois and talented intellectuals with socialist parties signifies a capacity for entering into the alien fate of the masses and adapting their personal, individual fates to it. While the worker may be driven to socialism merely as an instinctive reaction to his class position, the intellectual reacts in terms of distress involving his intellectual life. He acts under ethical or intellectual constraint, except in those cases where he is instinctively or consciously seeking to use the proletariat as the raw material for a personal political adventure.

As a matter of fact intellectuals are in some ways untrustworthy as leaders of political parties of any character. By their very nature they are often led, especially in parliamentary struggles, to an attitude which tends to blur natural social antagonisms and to hamper the play of class forces. For example, there has developed among parliamentarians in England an atmosphere of sport, "fair play" and friendly agreements among opposing politicians, all of whom are "members of this club"; and in France despite the severity of election and parliamentary struggles an attitude called *camaraderie*, which combines *esprit de corps* with an attitude of mutual responsibility, binding deputies of the most diverse parties closer to each other than a deputy is bound to a rank and file member of his own party.

Disgusted by the behavior of their own class and its individual members, intellectuals first tend to have utopian illusions concerning the character of the proletariat; and their subsequent discovery that workers are also human beings sometimes makes them cynical. The purer their intentions and the higher their ideals, the sooner they lose courage in the face of mass cowardice, brutality or egoism. Especially those seeking revenge are led to open or veiled desertion of their ideals by each outstanding success of their policies. They endeavor to lead the masses along paths which lie close to their personal interests and, when the masses are unwilling to follow, sever connections to seek a career upon the basis of the notoriety achieved through them. Again, radical intellectuals tend toward impossibilism;

through favorable circumstances they may lead a movement to a victory which they ruin through excesses and undue severity. More often, becoming dogmatic and pedantic, they ride a movement to death for the sake of "immortal" principles. This tendency toward extremism arises also from the nature of mental work, which can be easily dissociated from hard reality, from the intellectual's experience in the transvaluation of all values and from the vehemence of emotions and convictions, newly released in fighting his former class. Regarded as apostates, deserters and fanatics intellectuals are most hated in the milieu of their birth and hence tend to set up rigid principles which justify their conduct. Moreover the intellectual who engages in social conflict frequently serves a movement poorly or even deserts it because of his dislike of so-called detailed work.

The attitude of the working masses toward the intellectuals who serve them as leaders has its own mode of change. When a movement is still naive and inchoate, the intellectual who offers his services appears as a savior and as such worthy of confidence and admiration. Even when the supply of intellectual leaders has increased and new, "really proletarian" leaders have begun to develop from the workers' ranks, the intellectual is indispensable because of the increasing complexity of the problems of the party and auxiliary organizations, the broadening of political aims and the invasion of new arenas of struggle, such as parliament. Now, however, the moral position of intellectuals becomes less unassailable; they are accused of job hunting and careerism and are felt to be a foreign body. Furthermore their struggles and intrigues among themselves compromise them in the eyes of the masses. It would, however, be false to assume that leaders drawn from the ranks of the proletariat manifest greater political dependability than those coming from the educated bourgeoisie; the process of becoming middle class is rapid among both labor leaders and the upper strata of the workers, and these too may desert the cause. Nevertheless, labor leaders of proletarian origin tend to discipline severely, to displace and even to mistreat colleagues of upper class origin from a sort of feeling of class struggle. Some intellectuals have tried to win greater confidence from the masses by sacrificing their forms of life to their principles on the theory that words are less effective as propaganda than the silent example of daily life. The ideal of self-denial incidentally involves a heroic postulate

laid down by Bakunin: immediate disappearance or suicide of the leaders after the success of the revolution in order to prevent the rise of a new ruling class in their persons.

While educational categories can be defined only in terms of examinations and diplomas and have no economic significance, Karl Renner's characterization of intellectuals as "those beyond economics" is misleading. Neither those in the liberal professions nor those drawing state salaries are free from the effects of the business cycle in respect to real or money income. Nor are clear divisions along social and economic lines absent among intellectuals. For example, in England students of the old, aristocratic universities of Oxford and Cambridge rank socially above those of the new and more plebeian universities of Manchester and London, and university graduates tend to fall into the middle or the upper middle class according to the amount and type of their training and economic success attained in their professions. Such facts as well as the geographical dispersion of intellectuals make it hard to organize them.

The social status of student bodies is conditioned among other things by the fact that for several years, during which their contemporaries as laborers, merchants and managers of industry produce and earn, they as students only consume and that they enjoy a far reaching qualitative as well as a quantitative autonomy of work known as academic freedom. Thus the university period is a sort of capital investment of time and money, and the very fact of this investment proves that students—aside from scholarship holders or stipendiaries—come from a possessing class. The few exceptions are candidates for entrance to the bourgeoisie, the university acting as a bridge from a lower to a higher stratum of society.

While there is thus a definite logical and empirical connection between property and education, it cannot be said that each class has a fixed amount of education as an immanent peculiarity or necessary cultural attribute. With the exception of the old English universities the student body does not belong *ipso facto* to the bourgeoisie, and intellectuals must not be confused with the bourgeoisie. In eighteenth century France intellectualism was a transition to the *noblesse de robe*; there was then a sharp distinction between manufacturers or merchants and bourgeois intellectuals as subclasses.

Intellectuals in the lower income groups are termed the intellectual proletariat, a phenomenon

which arises as a consequence of an overabundance of persons offering their knowledge in the market. Always a pathological condition, it is caused by an intellectual overestimation of formal education in general; by sudden stoppage in the consumption of intellectual commodities due to general impoverishment; by industrial backwardness which forces youth into the civil service or a liberal profession, both of which are unprofitable because overrun; and to a small extent by personal negligence and foolishness resulting in ruined careers. Intellectuals who do not find a satisfactory place in the social order are retrospectively *déclassés*: they have been lost to their class of origin (birth); and prospectively *spostati* (dislodged): they have not proved their ability to win good jobs. While it is obvious that the size of the intellectual proletariat is related to the rapidity of social change, the intellectual proletariat does not consist merely of unsuccessful members of the upper classes. It also includes the sons of small manufacturers and artisans, who seriously menaced by large scale industry turn to an intellectual profession and endeavor to obtain a place at the governmental trough. From the standpoint of the political state there are two main groups of intellectuals, those who have obtained such places and those who have unsuccessfully tried to do so. The first, considered the most loyal of citizens, are always ready because of class egotism and personal selfishness to defend the state which feeds them, no matter what questions are at stake. The others are sworn enemies of government policies, eternally restless spirits which lead the bourgeois opposition and even revolutionary proletarian parties. The number of intellectual proletarians fluctuates widely; but although the state from time to time is compelled to transform thousands of dangerous opponents into active protectors and clients by making them officials, in general the tendency of government officialdom is to grow more slowly than would satisfy middle class elements. Having, however, some expectation of socio-economic advance the intellectual proletariat constitutes a transition class and reflects its characteristics. When this element is impatient or loses hope of improvement it may be absorbed by the lower classes. Poor persons of education become consciously antagonistic to the educated well to do. They furnish the yeast for social revolutions and champion the masses in the class struggle, which in part becomes a struggle for power of two economically differentiated educated classes.

Estimates of the social value of intellectuals

differ widely. Plato, for example, characterized the ideal republic as one in which philosophers would be kings and kings philosophers. Most intellectuals continued to cherish such a view of their kind: after the Napoleonic era the intelligentsia proposed a prominent role for itself, Saint-Simon's doctrine of the producer, for example, calling for a supreme council of scientists to direct economic life; and today intellectuals in many countries insist on their peculiar ability to govern reasonably, fairly and efficiently. The nineteenth century was profoundly influenced by the bourgeois intelligentsia and valued it highly. Early in the twentieth century some intellectuals began an intense spiritual self-criticism, a trend which is still going on and which has found in France its richest expression. Today some writers try to base upon the well known fact that both workers and employers entrust the political advocacy of their interests to intellectuals a theory that the intellectual fulfils a special function of social initiative, creativeness and leadership.

Some Marxists hold that the intelligentsia can maintain its intellectual power and freedom and properly fulfil its creative function only by affiliation with the working class. This view has some support in the fact that while the possession of education, as of riches, the power to command services and exclusiveness, is a hallmark of the bourgeoisie, intellectuals are bourgeois of slight social rank if they are bourgeois merely through the possession of education, and that while mental work is considered by the bourgeoisie to be more honorable than manual labor—when it is more profitable—to do no work at all and to live on one's income is considered most honorable of all.

In the syndicalism of the Sorel school the function of the intelligentsia shrinks from that of teacher to that of pupil. At the French socialist convention of Toulouse in 1908 Lagardelle defined the intellectual's task not as teaching the proletariat but only as interpreting the proletariat's experiences, using its data and employing its new principles for general cultural work. In any case this function of interpreting the experience which has been accumulated by the proletariat would presuppose the highest degree of intellectualism.

On the other hand, some thinkers have branded the political function of intellectuals as uncreative and sterile and, in so far as it serves the masses, pernicious and intrinsically false. Édouard Berth, Sorel's disciple, complains bit-

terly that producers entrust the championing of their interests to intellectuals who enthralled by demagoguery and without economic interests sell themselves like harlots to all parties for money and kind words, while at bottom they are unable to serve any.

Maurras places before intellectuals two alternatives: money (capitalism) or blood (tradition). He argues that since under the hegemony of finance adaptability to temporary requirements is valued rather than objectivity, the intellect is degraded through loss of independence. Hence the intelligentsia is powerless in a parliamentary democracy, while in a more authoritarian regime, where a caste principle of some sort rather than the principle of wealth would be the element of continuity, it would regain its proper importance. The materials of education and tradition must be taken from the masses, who waste them, so they may again acquire purity and fineness; and intellectualism must be removed from politics. Others, whose values are similar, believe they may conclude from the protest against democracy and the aristocratic tendencies manifest at the beginning of the Third Republic by such brilliant French minds as Renan, Taine and Fustel de Coulanges that the intelligentsia retains the character of an élite. Some intellectuals now ridicule the nineteenth century as the epoch of stupidity, decry efforts to "rationalize the unrationalizable" and oppose to Rabclais' "divine skepticism" the apparent objectivity of Auguste Comte. Others protest against the nationalization and politicization of literary men and scientists, movements which have progressed greatly since 1800; and perhaps Benda is right in attributing this development to the greater intrusion of the state into the life of its subjects. It is of course true that intellectualism is not "purely scientific" in spirit and "universal" in passion but actively champions states, classes and fatherlands. For good or for evil the scientist is no longer "exempt from civic duties"—he is a taxpayer and must do military service; more important, he has been conquered by the "fact," the concrete, and has adapted the world of his ideas to it. But thinkers who protest against this condition tend to emphasize the subjective aspect of intellectualism and to neglect the objective significance of a non-universal, non-scientific nature which characterizes much of the so-called universal and purely scientific intellectual work. In any case no very clear prescription for avoiding political service in its broadest sense has been given by these critics.

In some countries the prevailing trend even of the state is anti-intellectual. Although the Soviet state was partly the creation of intellectuals, today intellectuality in the U. S. S. R. is subordinated to the needs of the state and to a considerable extent "Americanized"; that is, spurred on to performances of maximum energy, particularly in the task of increasing production. In Fascist Italy intellectualism is subordinated to the strongly centralized concept of the state, the military origin of Fascism and its social discipline. At the same time corporatism has given a strong impulse to juristic, technical and some economic studies. In the more or less democratic countries intellectualism although largely demoralized still continues to play its old political role.

Finally, it may be said that while education is undoubtedly power, only a minimum of intellectuality is needed for the acquisition and exercise of political power for any length of time; such factors as energy, self-confidence and understanding of men are of far greater moment. The influence of the intelligentsia upon the mass remains superficial; it can unleash political movements which profoundly change the social structure, but only when aided by objective factors.

#### ROBERTO MICHELS

*See:* EDUCATION; PROFESSIONS; RESEARCH; UNIVERSITIES AND COLLEGES; ENDOWMENTS AND FOUNDATIONS; ACADEMIC FREEDOM; FREEDOM OF SPEECH AND OF THE PRESS; LIBERTY; NATIONALISM; CONSERVATISM; RADICALISM; CLASS STRUGGLE, REVOLUTION AND COUNTER-REVOLUTION; FRENCH REVOLUTION; RUSSIAN REVOLUTION; CLARÉ MOVEMENT.

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INTELLIGENCE. See MENTAL TESTS.

INTENT, CRIMINAL. The modern notion of responsibility in both civil and criminal law seems to involve a mental element. But if in the civil law it is more readily recognized that liability may exist without fault, a criminal act is scarcely conceivable unless deliberately committed by the guilty person. It thus appears almost axiomatic in the modern criminal law that two elements are necessary to constitute a crime: first, an injury; and, second, an intention to cause it.

Nevertheless, the history of the doctrine of criminal intent shows plainly that it is an element that has usually been rendered largely illusory. In many circumstances there may be enormous practical difficulties in distinguishing intent from negligence, and even an accident may appear to be negligence. The legal and popular conceptions of intent do not always coincide. In popular speech physical act, intention and motive are not as sharply differentiated as they usually are in law. In legal contemplation the requirement of intent is met not by the willing of the mere physical act but by the accomplishment of the constitutive elements of a crime. Even when the rules for determining criminal intent have been settled, it is far from an easy matter to apply them. The proof can be had only from external circumstances, a factor which leads either to the relaxation of the rules themselves or to the indulgence of presumptions. Fundamentally a great part of the confusion has been due to the failure to accept all the logical consequences of the requirement of guilt as the basis of punishment. Old notions have persisted.

For historically the necessity for the existence of any mental element is the late requirement. The right of satisfaction recognized by early law is an undifferentiated claim which may in modern terminology be based on tort, crime or a breach of contract; but whatever the basis of liability it attaches to purely external consequences. Since the right of satisfaction is a right to reparation, the question of the wrongdoer's intent is considered irrelevant.

Still the idea appears fairly early that some difference must be made between injuries caused deliberately and those caused involuntarily. In the Pentateuchal legislation (*Numbers* xv: 27-28) a thoroughgoing distinction was made between "ignorant" and "presumptuous" wrongs because in theocratic society sins and crimes are similarly regarded. In Plato's *Laws* voluntary and involuntary injuries are systematically distinguished, and the latter are more severely punished than the former; but Plato is aware that the distinction is something of a paradox and by no means generally adopted. In Hellenistic times various philosophic sects, notably the stoics, introduced moral concepts into legislation and thereby made it necessary to distinguish between the harmful result and the evil will. Punishment was confined as far as possible to the latter: thus Cicero could say that it is an implied rule of mankind (*tacta lex est humanitatis*) to punish not the event but the *consilium* (*Pro Tullio*, 22, 51).

This conception was adopted more and more fully in the mature Roman law. It had always played a larger part in the Roman law than in other ancient systems: the qualification *sciens dolo malo*, "wittingly and wilfully," is found in early documents and the supposed sacral law of Numa uses the expression *dolo sciens*. The term *dolus malus* in its abbreviated form *dolus* became in popular and later in technical speech the embodiment of the concept of wrongful intent. While public punishment was permissible only if *dolus* was present, *culpa*, or negligence, sufficed for the *delicta privata*. It is disputed whether in the imperial period after the reign of Hadrian *culpa* was not sufficient in the case of such heinous crimes as murder and arson.

A criminal theory had to be recreated for western Europe during the Middle Ages. The concept of law of the Germanic tribes consisted almost entirely of more or less elaborate tariffs of compensation for injuries. Practically no account was taken of intent or of wrongful

purpose. The liability for consequences was indeed recognized in a maxim: *Qui inscienter peccat, scienter emendat*. But contact with the Roman law and especially the canon law—the developed Christian theology went the full distance of considering only the wicked will as really punishable and the harm done as immaterial—forced men once more to pay attention to the subjective condition of the wrongdoer. The result was, nevertheless, merely a compromise.

The Roman *dolus* received only lip service. The canon law held that *versanti in re illicita imputantur omnia quae sequuntur ex delicto*, which implied no relation of will between the act and its consequences; the mere fact that the offender was engaged in evil sufficed. The ruling doctrine of the Italians, who were especially important in the elaboration of the general doctrines of the criminal law, was that the accused was responsible for all the consequences of an intentional deed which according to an objective standard must necessarily or probably follow from it. From such sources emerged the *dolus indirectus* of Carpzov, which dominated criminal theory almost into the nineteenth century. In its essence *dolus indirectus* is the assertion that all the foreseeable but not necessarily foreseen consequences of a criminal act are to be regarded as willed. *Dolus indirectus* thus represented merely a modification of the idea of *versari in re illicita*.

The necessity for the existence of intent in English criminal law has been expressed in the maxim of *mens rea*. The old Germanic rule of criminal responsibility is found in the *Leges Henrici* of the twelfth century; in this same code, however, in what Liebermann called a "shrieking contradiction" there is a phrase unintelligently filched and corrupted from the *Decretum* of Gratian: *reum non facit nisi mens rea*. This is a sentence from the sermons of St. Augustine referring to perjury, and it is doubtful whether in that passage *reus* had yet acquired its mediæval meaning of guilty. The maxim is not heard of again until it is cited by Sir Edward Coke in his Institutes (3, 6) with the addition of *actus*, and from Coke the requirement of a *mens rea* has been accepted in Anglo-American law.

The difficulties involved began to show themselves as soon as proof of a *mens rea* as an element distinct and separable from the unlawful act was deemed necessary. Such distinct proof was usually unobtainable and recourse in

general was had to presumptions and inferences from the fact that an unlawful act had been committed. The denial of a *mens rea* required the averment of some specific defense, such as accident, incapacity or the like. It is small wonder that Sir James Fitzjames Stephen was ready to declare the phrase *mens rea* to be an entirely meaningless one.

When the source of the maxim is remembered, it would be natural enough to imply that only the "guilty intention" was punishable, but this was never seriously accepted in English law. The proposition *voluntas reputatur pro facto*, "the will is taken for the deed," was voiced in connection with the crime of treason, since the mere "compassing the king's death" was in itself treason. But even here as in conspiracy an overt act of some sort—if only writing the plan out on paper—was in fact required, and the few cases that went further were not considered authoritative.

Indeed English law has gone almost to the opposite extreme of maintaining the old responsibility for consequences. It presumes every adult to intend the natural consequences of his acts. The *mens rea* is present at least theoretically when a criminal act is committed in the course of the performance of a "wrongful" action. This may be not only an act that is a mere civil tort but an act that is a breach of the accepted rules of morality. Such was the opinion of many of the judges in *Reg. v. Prince* ([1875] L. R. 2 C.C.R. 154]. It is true, however, that some crimes require a "special *mens rea*"; they are those that must be committed with "malice aforethought," "knowingly," "negligently," "fraudulently." But the effect in such cases is merely to change the burden of proof: the crown must prove the ordinary *mens rea* by further evidence than the mere inference from the *actus reus*. It must be remembered also that "malice" in English law is not equivalent to intent but includes also forms of evil purpose, design or motive. Thus while the terms *dolus indirectus* and *versari in re illicita* are not current English law, the ideas they represent are present perhaps in their most extreme forms.

The American law is much the same as the English, with one most important difference: the *mens rea* is not so readily constituted from any wrongful act. Many courts have held that an act merely *malum prohibitum* will not suffice. Offenses requiring special intent also constitute the exceptions to responsibility for indirect

intention. With respect to at least crimes of homicide (*q.v.*) American law, which has divided murder and manslaughter into degrees, is generally more rigorous than English law in insisting on direct intention. This is indeed a great difference, because crimes of homicide most frequently result in fortuitous consequences, and the most important aspect of the struggle to limit the scope of intention has everywhere been in connection with such crimes, a struggle that has succeeded in most European countries even where *dolus indirectus* is still otherwise recognized.

This is now the case, however, in a decreasing number of continental countries: the most important exception at present perhaps is France. The change has been brought about chiefly through the influence of German criminal law theorists. The campaign against *dolus indirectus* began with Leyser, Böhmer and Nettelbladt toward the end of the eighteenth century. Decisive for the subsequent development was Feuerbach's theory of the psychological compulsion of the criminal law, which led inevitably to the result that only conscious violations of express prohibitions could be punishable. The final result has been that German penal science and the German courts have abandoned *dolus indirectus* with all its associated ideas. Nevertheless, this again has not meant the complete triumph of direct intention. For in place of *dolus indirectus* there has arisen the modern doctrine of *dolus eventualis*, which has come more and more to be accepted in European doctrine and drafts of penal codes.

It is impossible to supply a generally applicable definition of eventual intention, for the reason that the doctrine is not everywhere held in precisely the same terms. In its essence, however, it consists of two requirements. In the first place, the consequences which result from an act must be actually not merely putatively foreseen. In the second place, the person who acts must have taken a certain intellectual or emotional attitude toward these consequences. It is with respect to this necessary attitude that opinions differ. The celebrated so-called Frank formula is based upon the hypothesis that the person who acts would not have been restrained from his deed even if he had come to the conclusion that consequences would certainly follow. The prevailing German doctrine, however, is of a more positive character: the person who acts must have decided to act in any event whether the consequences ensued or not. This

doctrine is based upon the so-called *Willens-theorie*, whose most determined champion has been Hippel and which asserts that the consequences are willed because the person who acted was in "accord" with the eventuality. Opposed to this theory is the *Vorstellungstheorie*, numbering a strong minority of adherents, who assert that it is sufficient for the person who acts to consider the consequences as probable. But certainly not all consequences are willed which are considered probable. The will theory is also not free from difficulties but it probably has the merit of being closer to popular conceptions. It must be recognized, however, that the theorists who have distinguished between *Wille* and *Vorstellung* have perhaps advanced matters less than might be supposed, for the reason that the problem of proof makes it difficult to apply the distinctions.

Any consideration of the responsibility for intent apart from the responsibility for negligence would be misleading. In no legal system has responsibility been confined to intentional conduct alone. The tendency in earlier centuries was to consider some forms of gross negligence as at least presumptively intentional. Upon the basis of the somewhat obscure Roman *culpa lata* the Italian law constructed the doctrine of *culpa dolo proxima* to serve as a form of presumptive *dolus*. In the first period of the German common law absolute distinctions were made between *culpa lata*, *levis* and *levissima*. To escape the implications of his theory of guilt Feuerbach was eventually driven to invent a *culpa dolo determinata*, which served as a substitute for *dolus indirectus*. He also spoke of "conscious" negligence—an idea that has descended to modern German criminal law, where it now serves, however, solely as the boundary of *dolus eventualis*, having in itself no consequences for measuring punishment. Moreover it is only in modern law that the decision that an act was merely negligent does not as a rule entail at least milder punishment. Both the mediaeval Italian law and the German common law seem to have punished as a matter of general principle all crimes committed through negligence, unless indeed *dolus* was of the very substance of the crime. The practise under the German and French codes is to set the accused free when there is a failure to establish *dolus* unless the codes expressly or by necessary implication provide also a punishment for negligence in the particular case. Such express provisions are rare with respect to major but common with respect

to minor crimes. The contraventions of European codes are usually construed to require only negligence; while this result has been achieved by construction under the German and French codes it is provided expressly under the new Italian code of 1931. Again it is axiomatic that where *dolus indirectus* is recognized the field of criminal negligence will be small, as it is especially in Anglo-American law. Finally, it should be recognized that probably all countries can show some examples of responsibility not only for intentional or negligent crimes but for consequences alone; such provisions are usually found with reference to crimes of great public danger.

To realize the full reach of the doctrines of criminal responsibility it is also necessary to consider the effects of the doctrines of mistake or ignorance of fact or law. Their net result is often to make a violation of the criminal law intentional in only an artificial sense. The general tendency in all mature legal systems has been to excuse mistakes of fact. Of course the mistake must relate to the constitutive elements of the crime. If Jones intending to murder Smith mistakes Robinson for Smith and murders him, he is guilty of murder because the law forbids the killing of any human being. On the other hand, errors of law have been very rarely excused. However, for both the Roman law and the Italian law of the Middle Ages it has been disputed whether a consciousness of criminality was necessary. The Roman law seems to have allowed the plea of *ignorantia juris* to be made by rustics or women, an idea that was later recognized in various places. One of the causes for the controversy with respect to past systems is the difficulty of determining whether the excuse of ignorance or mistake of law represented a rule of responsibility or a presumption of proof. As has been seen, *mens rea* in English law was never held to mean that ignorance of the criminal law was an excuse. In the German common law down to the end of the eighteenth century the rule was *error juris non excusat*. Under the influence of Feuerbach the excuse was later actually admitted for several decades with the result that there set in a sharp reaction, which has restored the old rule in modern German law. In France exceptions are made in very unusual circumstances. The Norwegian code, however, provides that where there is a mistake of law the punishment may be decreased or even abrogated altogether. In fact many of the continental theorists are in favor of abrogating

or at least modifying the generally prevailing old rule, and some of the recent drafts of penal codes provide for milder punishment. But the problem is a difficult one. It is true that modern criminal norms are so complex that the average citizen cannot be expected to know them all. On the other hand, a relaxation of the old rule may very well endanger the legal order.

It is obvious that the part played by intent as an element in crime has depended largely upon the penal theory which has been current at any given time. Where the underlying principle has been retaliation, as in early societies, intent will play only a very slight part, since the purpose of retaliation on its rational side is to equalize the loss of the injured. Under the theory of deterrence—still the accepted theory of modern communities—punishment is directed against the will of the prospective offender, and hence it is conceived that it can be effective only if the offense is a matter which the will can control. When reformation is considered the object of punishment, intent must still be considered the essential element of a crime, because it is only the wicked will that can be the subject of correction and reformation. But even where contrition has made punishment unnecessary as a corrective, it may still be required from a religious point of view in order to purge away the pollution of the crime. A version of this doctrine appears curiously enough in such statements as that of Fichte that the criminal has a right to be punished and that he is therefore unjustly treated when this right is denied him.

The writers of the Enlightenment emphasized classification of punishments according to the grievousness of the wrong. They directed their efforts chiefly against the penal system which had grown up in continental Europe—an amalgam of the primitive desire of retaliation, of the newer concept of the duty of the state to protect itself against destructive forces and of the canonical theory of crime as a sin to be discharged by purgation. In theory the last element demanded a very delicate gradation of evil intent and a much more precise adjustment of punishment to individual deserts than did the system of the reformers. In practise, however, the continental penal system had degenerated into the arbitrary and often brutal determination of punishment by "reasons of state." Only too often not *dolus* but the *praesumptio doli* sufficed. The reformers demanded the fitting of the punishment to the crime and insisted upon

the attribute of personal guilt, which meant necessarily the presence of intent.

The modern positivist school of criminology has compelled a reconsideration of most questions of penology from a scientific point of view. Since this school refuses to admit the freedom of the will and considers the right to punish to be justified simply as a measure of social protection, it might be expected that the adherents of these schools would insist upon concern only with the happening of injurious consequences. The initial tendency, from which there has been a reaction, was to accept overhastily theories of scientific determinism. The concept of intention may be retained by the most uncompromisingly scientific theory in order to express the fact that an individual has the power to select social rather than antisocial ends, although how and why he will use this power is not certainly predictable. This leaves the question exactly where it was in the most definitely "subjective" schools. The problem becomes one of inducing individuals to select social ends and of how they are to be treated when they refuse or neglect to do so. It follows that as long as in popular belief intention and the freedom of the will are taken as axiomatic, no penal system that negates the mental element can find general acceptance. It is vital to retain public support of methods of dealing with crime.

The positivists delight in pointing out the inconsistency of punishing a negligent act as a crime. Indeed it is difficult to see how such punishment can be reconciled with the postulate of guilt. Either the latter must be abandoned or a theory created which will fit the punishment of both intentional and negligent acts. A unified theory has usually been sought. Attempts have been made to see in the act of negligence a defect or a failure of the will. The application of the penal law to negligent as well as to intentional acts has been seen to be justified by its schooling of the will. The place of negligence in the theory of guilt seems to have attracted a particularly great amount of attention among Italian theorists. Two types of Italian theories may be distinguished: the theory of *prevedibilità*, which regards negligence as punishable because the offender has not foreseen a consequence that he might have foreseen—a view that is taken essentially by the positivists; and the theory of *causalità efficiente*, which insists upon guilt and finds it in the willing of the bodily action which may be

illegal. The latter theory really shifts the ground upon which the ordinary concept of intent rests; moreover the initial action may be involuntary or negligence may involve a total omission to act.

The question of criminal intent will probably always have something of an academic taint. Nevertheless, the fact remains that the determination of the boundary between intent and negligence spells freedom or condemnation for thousands of individuals. The watchfulness of the jurist justifies itself at present in its insistence upon the examination of the mind of each individual offender. Courts will doubtless long be compelled to separate from the mass of the community certain definitely recognizable irresponsible classes, such as infants and idiots, and to hold the rest of the community responsible for the direct consequences arising from their acts.

MAX RADIN

See CRIMINAL LAW; CRIME; PUNISHMENT; HOMICIDE; NEGLIGENCE; INSANITY, LEGAL; SANCTUARY.

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rechts (Berlin 1930). The Frank formula mentioned in the text is contained in Frank, R., "Vorstellung und Wille in der modernen Doluslehre" in *Zeitschrift für die gesamte Strafrechtswissenschaft*, vol. x (1890) 169-228. The rest of the German literature may be found in such textbooks as Hippel, Robert von, *Deutsche Strafrecht*, vols. 1-11 (Berlin 1925-30) vol. ii, sects. 23-26, and Mezger, Edmund, *Strafrecht* (Munich 1931) sects. 41-46. The German law is compared with that of other European countries in Hippel, Robert von, "Vorsatz, Fahrlässigkeit, Irrtum" in *Vergleichende Darstellung des deutschen und ausländischen Strafrechts, Allgemeiner Teil*, vol. iii (Berlin 1908) p. 373-599, which also contains references to Hippel's earlier studies. Hippel's survey is brought nearer to date in Schaffstein, Friedrich, *Die Behandlung der Schuldarten im ausländischen Strafrecht seit 1908*, *Strafrechtliche Abhandlungen*, vol. ccxxxii (Breslau 1928). For Italian and French literature: Carrara, F., "Dolo" in his *Opuscoli di diritto criminale*, 7 vols. (Lucca 1874-77) vol. ii; Spirito, U., *Storia del diritto penale italiano*, 2 vols. (Rome 1925); Ferri, Enrico, *Principi di diritto criminale* (Turin 1928) pt. II, ch. III; Garraud, R., *Traité théorique et pratique du droit pénal français*, 5 vols. (3rd ed. Paris 1913-24) vol. 1, sects. 267-312.

INTERALLIED DEBTS. See LOANS, INTER-GOVERNMENTAL; REPARATIONS.

INTEREST. *History of Doctrine.* Interest in its primary meaning is the payment for the use of money; more broadly, it may mean the return on investment in any form. In theoretical analysis it is generally taken to mean a "pure" remuneration for the use of money, or yield on money capital; pure interest is deduced from nominal interest by elimination of all elements imputable to cost or effort of administration, to insecurity of payment of interest or principal, to prospective changes in the purchasing power of money and to amortization necessary to maintain the principal intact. The word interest came into use in the late Middle Ages, replacing the term usury. The Greeks called the interest payment *tokos*, meaning offspring, whence Aristotle's statement that "money does not breed." The modern term comes from the Roman law expression for an indemnification for damage due to the delay in the interval (*interesse*) before repayment, one of the chief forms under which payment for loans came to be tolerated by canonical and civil courts. Interest in the modern sense was in the Middle Ages merely an important type of usury; since then the term usury has become specialized to mean interest at exorbitant or illegal rates.

In tribal and economically undeveloped societies there is a strong sentiment against lending

money at interest, which is usually prohibited as between members of the social group. The repugnance to interest has been ascribed to the danger of weakening the group in a military sense, since citizens capable of equipping themselves for war might be reduced to penury or slavery through debt. In Greece and Rome, where the ownership of landed estates was the gentlemanly source of income, the opposition to money lending was ostensibly grounded in ideas of social respectability; the opposition tended to disappear when money lending was regularly conducted on a scale which permitted the capitalist to live according to the genteel standards of the old aristocracy, and in the period of high civilization the law permitted interest at restricted rates. In the Middle Ages the prohibition was premised on religious and ethical principles. A loan was usually made under stress of special need for consumption purposes, and it was considered that to exact interest under such circumstances was to take advantage of a brother's need. Indeed it was admittedly a compromise with strict Christian tenets to require repayment of the principal. The doctrinal basis of the opposition to interest was found in the concept of objective value, any departure from which was looked upon as unjust. It was argued that no value could attach to the use of a consumptible good separate from the good itself, and money was regarded as consumptible because it could be used only by parting with it. Another argument was directed against the payment for time, over which no man could claim ownership. Church apologists therefore contend that mediaeval practise never seriously interfered with loans made in the course of business, where the use of funds had a money value to borrower and lender, provided only that the charge was "just." Moreover the payment of rent for the use of land or durable goods was never condemned by the churchmen or the canon law.

As trade and industry developed and a general loan market came into being, lending ceased to be treated as different from other market transactions. The role played by the Reformation in this connection has been disputed. Some attribute to Protestantism an important part in the disintegration of the mediaeval effort to apply ethical ideals to business relations, while others contend that it was rather a reaction, centering in relatively backward Germany, against the advanced humanistic tendencies of the Renaissance. In any case the prohibition of usury became increasingly difficult to enforce.

Legal devices and forms which to the modern student seem merely disguises for loans at interest came into general use; these forms were troublesome and their interpretation by the courts was uncertain. During the sixteenth century there developed a movement to abolish the prohibition; its literary champions were the Protestant leader Calvin and the French jurist Dumoulin. The first legal action was in England, where at the close of the reign of Henry VIII the prohibition of usury was replaced by a legal maximum [37 Henry VIII, c. 9 (1545)]; after a reaction this legislation was restored under Elizabeth [13 Eliz., c. 8 (1571)]. Other countries soon followed.

In the two following centuries the justice of charging interest was still the subject of controversy in voluminous theological and political writings but no attempt was made to discuss interest as an economic problem. The attack ran in the old moral and religious terms; and the defense was based on the supposedly evident fact that the use of money is a source of gain, is therefore of value to both the debtor and the creditor and hence should be treated by law like other articles of commerce. In the latter half of this period the demand for regulation was based more on mercantilist grounds: English writers, for example, argued that low interest cost was necessary to help English business to compete with foreigners in the export trade.

The next stage in the historical development of interest theory, comprising the work of the classical school of economists, extends for more than a century after 1776, the date of publication of Adam Smith's *Wealth of Nations*. Writers of this school contributed little toward the formulation of an integrated distribution theory, in which interest theory falls. They regarded the problem of distribution not as one of pricing services furnished to production but as one of dividing the total income of society into the shares of the three economic classes which they recognized. The landlord's share, rent, was explained as a "surplus," on the ground that it did not enter into the price of the final product stated in terms of pain cost. Wages were explained by the simple observation that the laborer must live. Thus the way was opened for treating the share of the capitalist, which was called profit, as a residue after the other shares were paid. J. S. Mill, for instance, regarded it as a settled doctrine that profit arises because labor produces more than is required to sustain the laborer; in other words, because

industry produces more than the laborers get. Yet the explanations of wages given when the topic of wages and not that of profit is explicitly under discussion run in very different terms; the most famous of these explanations, the wages fund theory, even assumes profit as previously determined (or negligible) and makes the wage share either the total capital or the portion actually used to employ labor. The classical school never faced the problem of the nature of capital as a quantity and hence could not have said anything very illuminating about the rate of interest. Their general conception of capital was that, like products generally, it is produced by labor and hence is really the embodiment either of a certain quantity of labor or of the subsistence goods on which the laborer lives while performing that labor.

In contrast to their vagueness regarding fundamentals, classical writers showed profound insight in many partial analyses and especially in practical conclusions. N. W. Senior in particular, following up hints in Ricardo, developed brilliant ideas in connection with capital and its return; and his lesser known contemporaries, Rae and Longfield, came near to explaining interest on the ground of capital productivity. Senior made the general character of capital and its function in production one of the four fundamental propositions from which he wished to develop the whole science of political economy. In his effort to bolster up the pain cost theory of price at one of the weak points recognized by Ricardo, Senior argued that the essence of capital as an element in cost is the pain of abstinence. Yet it is indefensible to attribute to him, as Bohm-Bawerk does, an abstinence theory of interest. Besides his clear and repeated explanations of the productivity of capital Senior stated expressly that abstinence has nothing to do with the return after capital has changed hands through gift or inheritance. In his discussion of profit he assumes that the sacrifice of abstinence would prevent the return from ever falling to zero but explains the actual level first as a residual and finally, after a very tortuous argument, by the proportion between capital and labor in existence; this is true but incomplete.

Economists of the classical school achieved progress also in their discussion of the various elements into which the gross return on capital must theoretically be analyzed. Adam Smith himself made it clear that in typical cases

part of the return must be treated as essentially a wage—later called wage of management—and another part as compensation for risk, true interest being different from both. J. S. Mill even had fairly clear notions of a further differentiation between payment for risk in the sense of an insurance premium against a recognized hazard and mere accidental deviations from a normal return because of miscalculation or unforeseen changes. These beginnings developed into the tendency to treat profit not as the gross income including interest, which was the usage of the classical writers, but as the final residual income of the entrepreneur after a deduction of both interest and wages of management.

The confusion in the classical reasoning between the causality problem of the market value of services of various kinds and the ethical question of remuneration for sacrifice explains in part the contemporaneous development of another system of economic thought which treated all property income as exploitation of labor. The socialistic and anarchistic schools, from Godwin and Thompson to Louis Blanc, Rodbertus and Karl Marx, have held that the modern economic order based on "economic freedom" has merely substituted the economic power of property ownership for the physical and military power of slave owner and feudal lord as a means of enabling the upper class to live by the sweat of the masses. Practically every detail of socialistic theory can be taken almost verbally out of the classical treatises, which habitually referred to labor as the producer of all wealth. Abstinence as a justification for interest was particularly vulnerable to ethical attack, since most of the abstaining seems to be done by persons who have first consumed all they can or at least more than they need. This point was used with telling effect by Lassalle in Germany. Whether they do or do not explain how property income is possible exploitation theories do not offer a cause and effect analysis of the proportions obtaining between property and labor incomes. As to the ethical challenge which they present, it goes without saying that in competitive society every income is based on economic power. Whether or when or how far property income is defensible on grounds of abstract right or of social expediency is a question to be answered by the ethical or political philosopher rather than by the economist. Interest is merely a form of payment for the use of real wealth transferred from one person to another. Hence no special objection can be

directed against it; its merits and demerits are those of private property and of a social order based on ownership. Moreover it is questionable, at least in theory, whether a clear cut distinction can be drawn between property and labor incomes. As was emphasized by Smith and Senior among the classical economists, a large part of the earning power of individuals paid for as labor is really the fruit of an investment no different in principle from any other; and another large part is the result of inheritance or chance.✓

Discussion of interest theory during the generation preceding the World War centered around the work of Bohm-Bawerk. Before him the English economist Jevons had given a mathematical version of a type of productivity theory along with a very penetrating discussion of the relative valuation of present and future goods. But Jevons' work received only limited recognition until similar views were presented in more popular non-mathematical form by the Austrian school, which for interest theory practically means Bohm-Bawerk, although Wieser's variant of the productivity theory is more in harmony with accepted doctrine of today. While it appears to rest on the preference for present as against future goods Bohm-Bawerk's view of interest is really a productivity theory, since the possibility of productive investment is the most important, at least from a short time point of view, of the three "reasons" advanced by him for such a preference. Jevons, Bohm-Bawerk and the writers who have followed their line of approach interpret capital as meaning essentially the substitution of more indirect or "roundabout" for more direct methods in production, as an increase in the time length of the production process with a resulting increase in efficiency of the use of primary factors. This is similar to the classical conception of capital, except that the earlier writers lacked the notion of correlated variation in elements of complex situations; they tended to think of capital as conditioning production in an absolute sense rather than of the amount of product as subject to increase by increasing proportions of capital. Böhm-Bawerk also labored to establish a distinction between the psychological preference of present to future and the notion of abstinence. He had great influence, especially in the United States, where particularly Fetter and Fisher took his work as a point of departure in constructing time preference or eclectic theories.



In recent years attention has been centered on Schumpeter's theoretical construction which regards interest as belonging essentially to a dynamic economy. The innovators among the entrepreneurs who bring forward new and more efficient methods of production and business management obtain a surplus over cost, a part of which is returned in the form of interest to banks and other suppliers of capital funds without which the new projects could not be executed. In the absence of new inventions and other advances there is according to Schumpeter no room for interest. In application to statics Schumpeter's theory is similar to Marshall's in that it deals with the long run equilibrium rate; while for Marshall this rate is determined by the interrelation of "waiting" and productivity, Schumpeter assumes that the rate is zero. It is difficult to see the reasons for this assumption: there is no limit to the use of capital even in the absence of new inventions, although the rate of return would of course fall indefinitely low as investment proceeded. Intellectually Schumpeter's dynamic interest is related to subsequent attempts to explain interest on loan funds in terms of banking cost.

**General Theory.** The theory of interest begins properly with two facts. The first is the existence of various kinds of goods, the use of which has economic value as distinct from the objects themselves; it is actually bought and sold, and the payment, based on the length of use, is called a rent. The value derived from possession of an item of wealth for an interval of time may be of three main kinds: immediate satisfaction, as in the case of durable consumption goods; assistance in producing other goods, as in the case of producers' goods; increase in sale value of the item itself through time, whether through natural increase in its quantity, improvement in its quality or change in the conditions of supply and demand. An effective increase in value must of course exceed any direct cost incurred in connection with it. The second fact is that many kinds of rentable goods can be produced under conditions and at a cost more or less accurately known. Both of these facts are of a technical sort; that is, they are data for the interest theorist, although they may be problems for the business manager.

The peculiar feature of interest which makes it a special problem for economics is that it is not a rent paid directly for the use of property in the concrete sense but is a payment for

the use of money (and as such takes the form of an abstract number, a ratio or percentage). Yet while the borrower obtains and repays a money loan, it is the use of goods which the borrower wants and gets by means of the loan. If loans for consumption are left out of account, as they may well be since under modern conditions their terms depend upon those of loans for productive purposes, the rental or yield of goods the use of which is obtained by means of the loan provides under normal conditions the income paid out in the form of interest. Competition tends to bring about equality of return from equal investments; the ratio of this equalized return to investment is the rate of interest. Since the income from property is a given fact, the problem of the rate of interest is that of explaining how the amount of the investment, the capital, is determined in monetary terms; in other words, it is the problem of the evaluation of productive property.

The psychological or time preference or agio theorists solve the problem of capital according to the immediate facts of demand and supply, buyers' and sellers' offers, viewed psychologically. There is in the market, they argue, a certain aggregate of such goods, on which the owners set a certain estimate and which prospective purchasers likewise value according to individual tastes and means. The value set on an item of wealth is of course the value of the stream of income which it is expected to yield in the future in comparison with similar units of service or satisfaction at the moment. The competition of buyers and sellers will set on income yielding wealth a price which makes the amount demanded equal to the amount offered at that price. This price involves a uniform market rate of discounting future values. Thus if at the equilibrium point it takes \$1 in hand to buy \$1.05 payable one year from date, it will also take \$20 to buy a piece of property yielding a perpetual income of \$1 per year; all other income bearers will be valued on the basis of the same arithmetic proportion and the rate of interest will be 5 percent. Taking into consideration the ordinary form of loan, involving repayment of principal, and ordinary investment and accounting policy, which reckons return only after full provision for maintaining the investment in perpetuity, the correct standard for comparison is that of a perpetual income of given size with the value of the wealth yielding such an income. As regards any particular item of wealth the process of evaluation takes the

form of capitalizing its income, with allowance for its expected duration, at the general market rate.

The productivity theorists approach the problem of capital valuation from a different angle. They do not question the validity of the time preference reasoning but find that it lacks finality as an explanation under actual conditions. They observe that as regards unique and non-reproducible durable goods there is no objection to the capitalization theory of evaluation, as a first approach at least; and if all durable wealth were of this character, in other words, if there were no possibility of producing it, there would be no objection to the theory as a final explanation. But the possibility of more or less closely reduplicating existing types of wealth or of producing new types of wealth yielding future satisfactions places the matter in an entirely different light. If the capitalized value of any income bearer is more than the known cost of producing items yielding an equivalent income stream, people will instead of purchasing the existing items set about producing new income yielding goods and these will sell not at their capitalized value but at the lower level set by cost of production. Conversely, no new wealth will be produced for the future unless the capitalized value of the expected income is greater than the cost of production. Hence, if new wealth of more or less durable form is actually being produced, all such wealth must sell under competitive conditions for precisely the cost of producing items of any physical type yielding the same income (after all deductions necessary for perpetual maintenance).

If goods are valued for the sake of their future yield, then their physical character is a matter of indifference; all such goods viewed economically form a perfectly homogeneous class, and the value of any item depends only on the amount of the future income maintained in perpetuity. It is characteristic of the psychological theory itself that only the future income as such is valued. Hence if it is possible to produce any goods yielding future income, the cost of production of these must determine the value of all goods of the class. Under equilibrium this value will be equal to the value as determined by capitalization, but that is because the supply of any good yielding more than interest on its cost will be increased as long as this relation holds. For non-reproducible goods or goods yielding less than interest on reproduction cost capitalized value with rate

determined at the investment margin and cost of production of equivalent goods are in fact different ways of saying the same thing—as long as any kind of durable wealth is actually being produced. In a society or a world in which there is actual growth the rate of interest is determined by or simply is the ratio between perpetual annual income and the cost of income yielding goods at the margin of growth. New investments will not be made unless they offer more than the purchase of old ones, which forces the writing down of the old ones to the level of the new.

That interest is the ratio between perpetual income and cost at margin is true only under "perfect competition." In actual markets economic adjustments work themselves out more or less slowly and imperfectly. Perhaps the most typical result in real life is to "overdo the thing" in expanding or contracting investment and thus to set up oscillations in the rate of return. Since neither the yield nor the cost of new wealth items can be exactly foreknown at the time when productive commitments are made, any piece of new property may from the start yield more or less than the interest on its cost and the longer the item lasts the more uncertain becomes the relation between return and cost. When an unforeseen change in conditions occurs, the owner of wealth affected by it receives a speculative profit or suffers a speculative loss through appreciation or depreciation of his investment. The capital value of an investment is measured directly in the case of new, free capital just flowing into concrete forms of wealth and is arrived at by the capitalization process in case of all concrete items of wealth in existence.

Another variant of the productivity theory is that advanced by Jevons and Böhm-Bawerk, which states the basic facts in terms of the length of time elapsing between the application of labor (and any other primary factors) and the enjoyment of the fruits and in terms of the efficiency in the use of these factors as a function of the time length of the production process. There is obviously a rough correspondence between this notion and the one expounded above which relates the cost of income yielding goods to the net return obtained from their utilization. While Böhm-Bawerk's view may be more appropriate for some theoretical analyses, it is fatally handicapped by the lack of a general and accurate conception of the length of the production process. In a certain loose historical sense capital goods may be resolvable into labor and

time or into labor, "nature" and time; but no particular item can be so treated for the simple reason that in the production of any capital good the use of preexisting capital goods is always involved. There is no working distinction between capital and other factors. Without the presence of the element of uncertainty all natural resource values at once become capital; from the standpoint of the market itself they are capital in any case. Much the same must be said of a large element in labor power, which is a produced good; it is social institutions which justify any separation of labor from capital, as the case of the slave suffices to prove. Nor is there a computable time length of the production process in any particular case; still less is there an average length in a literal sense. Much capital is completely permanent unless made obsolete by unpredicted changes, and a series containing infinite items cannot be averaged. An average can be found only theoretically by dividing the annual maintenance and replacement into total capital value, a calculation which presupposes that all the data of the capital and interest relation are previously known. In fact it is always intermediate products, not the application of labor over more time in a literal sense, which produce the increase in output. Interest must be treated as the productive yield of capital, defined and measured by its cost or the cost of equally productive items, in terms of sacrificed immediate goods.

Eclectic theories generally make use of the demand and supply scheme of analysis to combine the psychological and the productivity explanations of interest. To complete the exposition it is necessary therefore to consider the problem in terms of demand and supply. In this connection it is not clear what is supply and what is demand, what is being priced and what is the price, since both the commodity and its price are stated in money terms. One may regard interest as the price of the commodity, use-of-capital, or savings as the price of future income. The former is the more familiar view: the supply of the commodity, use-of-capital, comes from saving, while the demand for it comes from the people controlling opportunities for investment.

In this view the supply is the total amount of productive wealth in society, and the savings made in any short interval constitute merely a small addition to it. The rate of saving, which is only the rate of increase in the supply of capital, may or may not depend on the interest

rate; but in any case the supply as such keeps on increasing always, at all rates. The supply is thus highly inelastic: strictly speaking, it is absolutely inelastic at any instant of time. Demand, on the other hand, is highly elastic, since it is indisputable that the opportunities for investment would absorb large amounts of capital with only a gradual lowering of the rate of return. Hence demand determines the price, supply being a "datum," a given condition but not a cause.

The other view of the interest transaction as a purchase of future income for present wealth in hand corresponds to the statement of the problem as essentially that of the valuation of productive wealth. Now, if the commodity is future income, supplied through the production of income yielding goods, and the demand comes from savings, then the supply is indefinitely elastic and the demand inelastic. The virtually unlimited possibility of using more capital in production means that future incomes can be provided in correspondingly large volume at a slowly increasing cost. Other things being equal, it is true that a given investment—that is, cost incurred—does tend to yield income at a decreasing rate as the amount of investment increases, since capital as a factor in production is subject to diminishing returns; but this decrease is very slow in comparison with the total magnitudes involved. It appears, for example, that in the United States the elasticity of demand for capital is around unity; that is, the total supply of capital, which includes the entire national wealth, would have to be doubled before the interest rate would be reduced to half its value at the beginning of the test. This would call for saving for a full generation at a high rate, so that it is correct to consider the supply of future income at a given time as practically unlimited, indefinitely elastic. The demand for future income, represented by the amount of savings available for investment, is at a given moment narrowly and almost absolutely limited. In the theoretically perfect adjustment it would at any instant be zero in absolute amount, a mere rate of flow, disappearing in investment as it appeared in saving. In this situation, as in the case of any commodity produced under nearly constant cost, demand conditions—the psychological comparison between present and future—can operate only to affect the volume of savings without an appreciable influence on the price at which they are invested. Men with different estimates of future in terms

of present satisfactions will save different amounts (or conceivably consume varying amounts of capital already in hand); but the effect on the interest rate of the resulting changes in total supply of capital will in any short short interval, even a year, remain negligible.

In the long run the yield on new investment depends in part on the amount of capital previously invested (in all past time) and thus reflects variations in the amount of savings in the past, which may be said to depend on comparisons made in the past between present and future. This does not affect the conclusion that at any given time the supply of capital is a datum and that the current psychological estimates have no effect on the rate. Moreover serious objections arise with regard to the historical view itself. At the rates of pure interest which have obtained in modern times it would require a generation for a saver to get in income a total sum equal to that given up in making his investment. In reality the net accumulation of capital depends on the fact that savers maintain their capital and leave it behind when they die. At most they consume the income; and the classes which make substantial savings even reinvest a part of income through life. It does not seem very realistic to call the decision to save and invest, looking beyond one's own life, a choice of future rather than present satisfaction. It may of course be put in that form in order to construct a rationale of economic choice. But there is no reason to believe in the reality of "impatience" or of preference of present to future as a general principle of conduct, if conditions are correctly stated to isolate this comparison from other factors, particularly if interest itself is eliminated as a factor. A realistic discussion of the motives involved in decisions as to saving would run rather in terms of interest in security and power, of living standards, of forms of social emulation and of similar facts of social psychology and culture history.

Nor is it legitimate from a long time point of view to assume that other things remain equal in connection with the law of diminishing returns on investment. As new investment tends to lower the point of equilibrium on a descending demand curve for capital, other social changes are always and inevitably acting to change the position of the curve itself. In fact these two sets of changes have roughly offset each other through history, so that there has been no clear trend of the interest rate upward or downward,

especially in the modern industrial era. The relative constancy of the interest rate has aroused the curiosity of many economists and provoked much speculation. An older view, held by Henry George and Alexander Del Mar, found a physical basis for interest in the average rate of growth of animals and plants, while Cassel has made the ingenious suggestion that it may be connected with the length of human life. A sufficient explanation is found in the tendency of practically every form of social progress both to make saving easier and to increase the demand for capital, raising the curve vertically if drawn with quantity on the base line. Even if invention and all forms of social progress ceased and saving went on at an indefinitely high rate, the interest rate would never fall to zero; for there is no limit to the possibility of using capital to increase the supply of innumerable commodities which could never become free goods. There is no empirical evidence or abstract reason even for the belief that under such conditions the point of long run equilibrium—a naturally stationary supply of capital—would be reached. It appears therefore that Marshall's long run equilibrium theory is just as untenable as the short or long run psychological theories.

The long run may be discussed only in the manner of the philosophy or theory of history. The interest rate tends to fall or rise as the effect of accumulation runs ahead of or behind the effects of other types of social change, notably increase of population, development of natural resources, invention of new technical processes and opening up of new fields of demand. Accumulation itself likewise depends on the general movement of taste and the people's outlook on life. Here analysis of the type of price theory in terms of tendency toward equilibrium under given conditions has no applicability whatever. The problems and theories are necessarily sociological or institutional, and comparatively little help may be expected from any sort of deductive theorizing yet devised.

From the standpoint of computation there are two ways of looking at the interest relation. One is the everyday view of the interest loan or other investment in which the investment itself is maintained permanently. From the gross yield of the property is deducted, first, all operating expense; second, direct upkeep cost; and, finally, a sum which accumulated to the point of retirement from service will replace the original investment. The remainder is a

perpetual net income; when divided by the cost of the property it shows the rate of interest. It is evident that both the cost of a capital good and the annual contribution to a sinking fund for replacing it involve the interest rate itself. Another method of formulation is more suited to the bond market and amortized loans. In a continuous market under stationary conditions any investment can theoretically be made, continued or realized at will; hence the accumulated cost (less return if any) up to any point in time must equal the discounted net return looking forward from the same point. Both of these facts may be stated as equations with the interest rate as the unknown; a few algebraic operations would simplify the two equations into the same form. It is most realistic to take as the equating point the moment when construction is complete, equating past cost with future return. If  $S$  dollars per year are saved and invested for  $C$  years and the resulting property yields a net rental of  $R$  dollars per year for a service life of  $L$  years (with no scrap value), then  $SA^L(A^C - 1) = R(A^L - 1)$ , where interest is compounded annually and for simplicity  $A$  is written for  $(1 + i)$ , unity plus the interest rate. The first view more nearly corresponds to the realities of the situation than does the view of discounting. The essence of the matter is that artificial capital goods yield during life a total net rental greater than their cost; the difference is, roughly speaking, interest on the cost for the period, which must be distributed equally through time. To do this exactly calls for compounding continuously instead of annually by the use of the same type of formula as that given above.

*Historical, Dynamic and Sociological Aspects.* A survey of the general theory of interest serves to emphasize the vast territory which would still have to be covered in order to give much concrete information about the factors determining the rate on a loan under varying historical and social conditions or even on loans of a different character in the same country and year. In the first place, the general theory itself is abstract in a sense beyond that implied in generality: it explains in terms of given conditions which are taken for granted in every aspect except the quantitative. Back of the motives affecting choice immediately, at the time and place in which the decision is made, is an infinite complex of why's and how's, ultimately including most of human history. A final explanation of any economic choice would have to

include these factors in their concrete character, giving a sociological or institutional treatment instead of one based on the analogy of mechanical forces. In the second place, there are considerations which affect the terms of loans and investments in greater or less degree in different classes of cases, large or small, running into unique circumstances of the individual case. Some of these considerations are of such a character as to supplement the general theory, some rather of the nature of interfering forces which prevent competitive tendencies from finding effective expression.

Even in the most highly developed loan market hardly two loans are alike within significant limits, and many divergent types must be recognized. Superficially viewed, this is something of a paradox, since the commodity dealt in is the use of wealth in its most abstract form; yet loans are in fact much less amenable to standardization than many concrete commodities, such as wheat. But in addition to the unlimited diversity of circumstances among different loans and capital commitments at any given moment there is the supreme fact that they all look to the future for their value. And with reference to the future both an intrinsic uncertainty as to facts and an even wider divergence of human opinions and attitudes defy specification.

Even in the most advanced countries there is no one general interest rate and no one general money market, although there is a perfect market for certain securities dealt in by name and an approximation to a general market for loans of very short duration and unquestionable security. In practise in virtually every case the making of a loan is a matter of negotiation, and negotiation is the antithesis of what happens in the perfect market of economic theory. A few governments and large corporations are in a position to issue securities within limits and to offer them to the public through an impersonal marketing organization, but even with them a new loan of considerable size will be floated by negotiation. Even within the field where standardization of loans is carried farthest, it is normal for the bank rate to be about double the rate on the best bonds, while call money may go at a fraction or at a multiple of the latter. Farm mortgages plod along very steadily at an intermediate level, while the others fluctuate in their respective ranges, largely independent of one another. Outside the field covered by organized markets the loan rate may be almost rigidly uniform through widely varying conditions—an

instance of the "customary price" in connection with loans—or may fluctuate within the widest limits from case to case; the latter is of course the more usual situation. Generally the rate is much higher than in organized markets. Thus in the south in the United States Negroes are said to borrow \$5 at the beginning of the week and repay \$7 at the end of it, an interest rate of 40 percent per week. Loans made to the very poor on furniture and similar articles are said to range from 100 percent up. In installment selling, a method by which a large fraction of the automobiles and a smaller fraction of many other goods are regularly marketed in the United States, the terms involve a rate of interest from 11 to 40 percent; it is to be noted that these rates are charged to persons of good credit standing and on quite sizeable sums. The Uniform Small Loans Act, designed to curb the exactions of loan sharks and adopted by over twenty states, prohibits interest above the monthly rate of  $3\frac{1}{2}$  percent.

Because of the overwhelming difficulty of the task no study of the general interest rate through history has as yet been undertaken; even the investigations of limited periods in the history of single countries are not detailed enough to permit confident generalization. Until the nineteenth century the available information relates to specific cases which may or may not be typical; yet even when allowance is made for their uncertain representative value, the data are sufficient to illustrate the extreme divergence of nominal interest rates in different epochs. This, however, should not be taken to imply qualification of the statement that the rate of pure interest has been surprisingly constant through history.

Thus W. H. Dubberstein's study of numerous clay tablet records extending over many centuries found that in later Babylonia the rate of 20 percent recurred with monotonous regularity; the rate was twice as high in the neo-Babylonian and Persian periods (650–325 B.C.). In Ptolemaic Egypt the regular rate was 2 percent per month (Westermann, W. L., *Upon Slavery in Ptolemaic Egypt*, New York 1929, p. 32). In Greece the rate at the time of Solon was about 16 percent; at Corcyra in the second and third centuries B.C. loans on good security commanded 24 percent while the common rate at Athens in the time of the orators was from 12 to 18 percent (*Palgrave's Dictionary of Political Economy*, vol. ii, new ed. London 1923, p. 429). Mommsen states that in Rome the rate in the time of

the monarchy was probably about 10 percent per annum (*The History of Rome*, tr. by W. P. Dickson, vol. i, new rev. ed. New York 1905, p. 195). Under the later republic interest was usually stable and low, normally ranging from 4 to 6 percent. In Asia, where invasions, inefficient government and indirect business methods made for insecure possessions, 12 percent was a low rate even in times of peace (Frank, T., *An Economic History of Rome*, 2nd ed. Baltimore 1927, p. 294). The Byzantine law of Justinian limited the rate of interest to 12 percent for loans on cargoes, 8 percent on loans for business purposes and 6 and 4 percent in other cases (Ashley, W. J., *An Introduction to English Economic History and Theory*, vol. i, 4th ed. London 1909, p. 210). In the early Middle Ages Byzantine commerce could raise money at the moderate rate of 8 to 12 percent; the rate was lower still in the tenth century, which was quite unusual for the rest of Europe (Boissonade, P., *Life and Work in Medieval Europe*, tr. by E. Power, New York 1927, p. 51).

For western Europe in the Middle Ages it is difficult to make definite assertions regarding the interest rate, because the fact of interest was concealed or disguised in consequence of the usury laws. Interest was certainly high for most loans. Ashley states that the rate which the Jews were permitted to charge in England in the thirteenth century was two pence per week on the pound, or approximately 43 percent per annum (p. 203). According to Sombart the rate permitted to the Jews by a regulation of 1243 in Provence was 300 percent, while that specified by the emperor Frederick II the next year was 173 percent (*Der moderne Kapitalismus*, 2nd ed., Munich 1916, vol. i, p. 626). In contrast Boissonade states that during the Hundred Years' War commerce in Italy and Germany obtained credit at the rate of 4 to 10 percent (p. 288), and M. M. Knight asserts that commercial interest rates in southern Europe became standardized from the thirteenth century at 10 to 17 percent (*Economic History of Europe to the End of the Middle Ages*, Boston 1926, p. 116).

For the Renaissance and the following period data have been made available by Ehrenberg (*Capital and Finance in the Age of the Renaissance*, abr. and tr. by H. M. Lucas, London 1928) from the Fugger records and other sources. Ferdinand and Isabella sold annuities bearing 10 percent (p. 24). In the sixteenth century the rate on commercial loans on the Antwerp bourse, an effectively organized market, was from 2 to 3 per-

cent per fair, i.e., 8 to 12 percent per annum (p. 247). In a list of thirteen short period loans made to various governments between 1519 and 1521 the rate varies from 7 to 27½ percent besides "considerable" brokerage charges (p. 259-60). In the decade 1532-41, it is asserted, there was a slow reduction in the rate of interest, which varied from 13 to 20 percent in 1535-36 (p. 265). For the years 1546-47 there is available a list of loans in which the Fuggers were borrowers, chiefly from other south German banking families, and another list of loans by the Fuggers to various courts and governments; in the former the rate varies from 8 to 10 percent, in the latter from 11 to 13½ percent (p. 269).

The first modern bank, the Bank of England, was founded at the end of the seventeenth century in connection with the first funded state debt. From that date one may speak of a general rate of interest in a sense not previously possible, especially as London has since been the central capital market of the world. The transactions of such a bank and dealings in such funds involve a publicly known rate, and publication is the main consideration in standardization. The initial loan to the state, which was a new dynasty of questioned status engaged in a major war, was at 8 percent; but the rate fell rapidly and after the conversion of 1750 the English government was borrowing from the bank at 3 percent. In 1751 the government issued 3 percent consolidated annuities; but later the consols fell far below par, fluctuating with the wars and the progress of the industrial revolution. In Holland in the second half of the eighteenth century, as Adam Smith observes, the government was borrowing at 2 percent and private persons at 3 percent (*Wealth of Nations*, bk. I, ch. ix).

Modern conditions may be said to begin after the post-Napoleonic settlement and the final establishment of English coinage on a gold basis. Since the first quarter of the nineteenth century information on interest rates becomes increasingly abundant both for the London money market and for other markets. An analysis of such data reveals the existence of permanent differences between rates on the same type of loan in different markets as well as between rates on different types of loans in the same market. Only when allowance is made for the fact that each type of rate in each money market seems to have its own zone of variation do the fluctuations of the rates appear more or less cor-

related. If the level of the interest rate after 1825 is to be judged by the yield of British government consols, which by many authorities is taken as the nearest available approximation to pure interest, it will be found to have fluctuated between 3 and 3½ percent until the 1880's; the trend after that was downward until the turn of the century, when the rate began to rise, reaching its customary level by 1910. Similar data for the United States are available only from the last quarter of the nineteenth century. Thus F. R. Macaulay's index of bond yields, based on the quotation for the "best" railroad bond—that is, the one with the lowest interest rate—indicates that the interest rate was approximately 5½ percent in 1875; it fell fairly steadily to about 3½ percent in 1900, rose to about 4 percent by 1914, reached its post-war peak at 5 percent in 1921 and has fluctuated since in the neighborhood of 4½ percent.

There is no great difficulty in indicating the general lines along which changes in the general interest rate and divergences between various types of nominal interest rates are to be explained. The most important immediate causes producing changes in the interest rates in modern times (acting apart from or through the intermediary of real investment opportunity and real savings) have been the fluctuation of business conditions in the now unpleasantly familiar cycle, war and the opening up or saturation of new fields of investment, of which the railways are the stock example. The main causes of divergence in the rate from one type of loan to another at a given time are included in the categories recognized by Adam Smith and his followers; namely, trouble or expense in connection with the loan and uncertainty of payment of interest or principal. To these should be added the case of monopoly: special conditions may cut a borrower off from the general market and give a lender power approaching that of exclusive control over a necessity of life.

Administrative expense clearly accounts for the excess of the bank rate over that on good bonds. Indeed some economists have held that the interest rate under modern conditions is determined by the operating expenses of banks, a statement to be interpreted in connection with the entire theory of the relation between currency and interest. Again, a pawnbroker may lend at a rate per month equal to that yielded in a year by good securities and still make no more than the same net rate of interest, if account is taken of the expenses incident in the conduct of

a pawnshop and the competitive wages to which the pawnbroker may lay claim.

Uncertainty, which is a better general term than risk, affects more or less every loan or investment, depending especially upon how far into the future the commitment looks. The measurable element of uncertainty, risk in the proper sense, can be eliminated by applying the insurance principle in some form. But the subjective and individual element of uncertainty is not susceptible to standardization; it is a matter of how much confidence one feels in his opinions about the future course of events and of how much courage he has in acting upon his convictions. Uncertainty, more or less connected with expense, explains the major differentiations in interest rates between different sections of the money market. Rates are high in new countries and frontier areas, partly because experience offers no basis for accurate prediction of the future or objective estimation of risk and partly because the lenders typically live far away in the older centers and have to depend on sources of information in which they place limited confidence. There is also the cost of obtaining, transferring and validating such information as is available as well as special mechanical costs of administration at a distance. Such considerations also apply as between loans separated by other than geographical distinctions, particularly between older and newer types. In addition most capitalists are more informed or feel more confidence in their information about certain types of investment than about others. The fact probably does not produce important permanent differences, but it certainly retards the flow of capital from one field to another in response to rapid changes in real investment prospects.

One phase of the factor of uncertainty has to do with changes in the general price level, to which Irving Fisher has given special attention. Apart from any connection with general business conditions changes in prices should obviously affect the interest rate, if they are generally foreseen. If the value of money is expected to fall between the contraction and the maturity of a loan, the borrower should be correspondingly more disposed to borrow and the lender less disposed to lend until the rate goes high enough to compensate for the change. Perfect foresight would clearly mean foreknowledge of conditions during the period of the loan and not an adjustment of the rate on the assumption that the rate of change at the time the contract was made

would hold good forever, as Fisher assumes; but the latter interpretation of foresight may more nearly describe the way men think and act. People do not have the necessary foreknowledge, in the full sense of the term, and even in the face of actual changes they inveterately tend to consider the value of money as absolute unless it is visualized in some concrete speculative price, such as the quotation of one currency in terms of another. As a matter of fact, to the extent that the effects of anticipated changes in the value of money do appear in the history of interest rates and prices they are largely due to an indirect influence; namely, the relation between price changes and business conditions. Rising prices mean large profits, because wages and other basic costs tend to lag, and hence an increased demand for loans. Also capital owners may be more disposed to go into business for themselves rather than to lend their funds at a time when things are "booming," which would mean a reduction of apparent supply as well as increase in demand.

However the matter is viewed, the problems of interest, of the price level and of the business cycle overlap. Certain economists, notably Fisher, consider the business cycle essentially a phenomenon of price level changes, a "dance of the dollar"; while others would regard price changes as effect rather than cause, some of them suggesting even that the primary phenomenon is precisely the artificial stimulation of the creation of capital through credit expansion. The obvious relationship between the interest rate and cyclical price movements arises from the fact that in the modern business world the great bulk of the medium of exchange consists not of money in the primary sense of a money commodity, such as gold, but mainly of bank credit and to a lesser degree of government credit. Bank credit, whether in the form of deposits or of banknotes, represents a right to obtain gold on demand and under a gold standard depends for its validity on the power of the banking system to make this right good. But only a fraction of the normal total volume of bank deposit and note obligations is represented by gold stored up anywhere to meet the demand; the primary backing of such credit consists of the presumably liquid assets of borrowers from banks. Deposits and notes for the system as a whole are created through loans by banks to their customers. Since the banks lend money chiefly for productive purposes, taken in the broad sense to include merchandising, there exists a close



and inseparable connection between the phenomena of money and circulating credit on the one hand and those of capital and interest on the other; a new bank loan is an addition at once to the supply of effective currency and to that of effective capital, for the proceeds are used by the borrower in the same way as is a loan based on real saving.

If "other things remained equal" it would be fair to argue that the creation of capital by bank loans represented a tax on the owners of money through a reduction in the purchasing power of each unit. For the writing of slips of paper and the making of book entries by bank clerks do not directly create any more goods or productive capacity, and the new purchasing power placed in the hands of borrowers must be subtracted from that of the effective money previously in circulation; the dilution of the circulating medium must manifest itself in a rising price level. It is arguable, however, that new purchasing power may serve to bring into use existing wealth or productive power previously idle and so to increase the total output and circulation of goods instead of raising prices. Then in effect the new real capital created through the loan will represent no real cost to society as a whole other than what may be involved in putting idle capacity to work, and this may even be a gain.

Apparently both of these effects are represented in some degree in what actually happens. An expansion in the volume of bank loans is associated with both an increase in the total volume of production and a rise in the price level; the latter is higher than it would have been in the absence of credit creation, even though it may not rise absolutely. In the past business expansion financed by created media of exchange has turned out to be a process which ultimately reversed itself, giving rise to cycles. Precise proof of what is causal in the process depends on a very accurately measured statistical knowledge of the sequence and timing of changes or upon the successful control of the phenomena by actual manipulation of some element in the situation. Until such proof is available it is not possible to say positively even that the process is necessarily self-limiting and reversing or that this feature is necessarily connected with the use of credit currency and with expansion and contraction in its volume.

For the student of interest the important fact is that all these phenomena exert a large and at times overpowering influence on the loan

market, acting on both the supply and demand sides. One effect is a fairly sharp separation between short term and long term loans, the latter being relatively much less affected. In the market for short term loans the fundamental investment conditions, with which the general theory of interest is concerned, may be eclipsed at crucial points in the cycle by the special situation generated by the cyclical movement. The demand for loans may be dominated at the moment by the state and prospects of business from a cyclical standpoint and by the necessity for business men to meet outstanding obligations and keep solvent. The supply of loanable funds may be just as completely dominated by the state of bank reserves and the general banking position and by the vicissitudes to which money incomes in general are subject because of monetary changes.

The effects of the cycle exercised through phenomena associated with long term capital are more varied. The fluctuations of profit connected with cyclical movements of business affect the magnitude of corporate savings which have become an important source of supply of new capital. Although corporations invest reserves to some extent in public securities or in those of other industries, the bulk of their savings represents plant extensions and improvements; the increase in corporate savings based on rising profits is thus a factor contributing to the overdevelopment of industries momentarily prosperous, which tends to unbalance development and to aggravate the cycle. The fact that interest on long term loans is a fixed charge which does not rise with the general upswing is one of the factors responsible for the lag of costs during prosperity and contributes to unsound expansion. On the downswing the bond or mortgage interest becomes a heavy charge on industry; and the long term creditor often becomes complete owner of the business, entirely wiping out the equity of the active direct owners.

Interest as a form of property income which does not involve its recipients in direct participation in active processes of business and production is bound up in a capitalist society with group antagonisms. There is a tendency to regard as parasitic people who live from a fixed and assured income completely divorced from effort or concern with the work and life of the masses. The antagonism between the active business group and its silent partner, the outside investor of long term capital, creates the opportunity for abuses such as insiders' profits or

the shift of losses to investors; while the presence of such a party as the innocent investor, whose property must not be affected, makes regulation by public authority difficult and sometimes unfair, since most of its burden is apt to fall on the owners of the equity. At the same time the shrinking in the value of fixed incomes during prosperity and the passing of productive enterprises during depression into the hands of people who neither want nor are fit to assume the responsibility of management create social problems of far reaching significance. These social antagonisms and problems tend to become increasingly vital as industrial civilization makes more use of accumulated wealth both in providing for the satisfaction of consumers' wants and in playing the game of power in the national and international arenas.

Capital and interest are commonly regarded as peculiarly characteristic of the capitalist order. Thus while the regulation of wages by public authority and the limitation of profits by taxation were accepted as interesting experiments not vitally affecting the foundations of the capitalist system, the emergency decree of December 8, 1931, reducing interest on private loans in Germany was interpreted by many as evidence of the passing of capitalism. Yet there is no abstract reason or experimental evidence, in so far as any is available, to justify a belief that interest will disappear in a socialist or communist society. The use of the pecuniary calculus to maintain the existing stock of capital and to increase it by accumulation as well as to distribute it among the various branches of production must lead to the employment of an interest charge for the use of capital. As long as capital is merely maintained, the interest charge may be nothing more than an accounting device and the interest income received by the national authority may be returned to the producers either as a uniform reduction in the prices of all goods below cost or in some other form. But if new capital is accumulated, the presence of interest as an element of cost would mean that only a part of the total output is distributed to the population in the form of consumers' goods. In a socialist economy, however, the class living on interest income would disappear and with it also the social problems and antagonisms to which rentier incomes in a capitalist society give rise.

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See: DISTRIBUTION; CAPITAL; VALUE, COST; DEMAND; SUPPLY; ABSTINENCE, RISK, SAVINGS; ACCUMULATION;

INVESTMENT; USURY; BANKING, COMMERCIAL; MONEY MARKET; CORPORATION FINANCE; RENTIER; NATIONAL INCOME.

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**INTERESTS.** When a number of men unite for the defense, maintenance or enhancement of any more or less enduring position or advantage which they possess alike or in common, the term interest is applied both to the group so united and to the cause which unites them. In this sense the term is most frequently used in the plural, implying either that various similar groups or advantages combine to form a coherent complex, as in the terms vested interests, moneyed interests and labor interests, or that the uniting interest is maintained against an opposing one, as in the expressions conflict of interests and balance of interests. Interests so understood usually have an economico-political character.

The importance of compact interest groups in the development and the vicissitudes of states was recognized by the great historians of antiquity in the struggles leading to the legislation of Solon and of Clisthenes, in the tenacious system of the Spartan oligarchy and later in the struggle of the orders at Rome, in the agrarian reforms of the Gracchi and in the conflicts which led to the establishment of the principate and the empire. Modern historians have seen in the clash of interests, as the conjuncture of conditions and events favored one side or another, one of the universal factors in social and political change. In one of its broadest forms it appears in the conflict of older agrarian interests with the aggressive interests associated with commerce, finance and industry. To the Marxians all history is a record of a series of clashes between various changing class interests; in the modern economic order the important conflict of interests is that between capitalist interests and those

uniting the wage earning classes. These economic interest complexes, however, are limited by competitive differences within themselves and are crossed by interests of varying potency derived from other than purely economic considerations, such as those of status, race, nation, region and religion.

The historical dominance of interest groups has at various times been challenged by conceptions of society based on individualistic doctrines, such as those of the social contract and of natural rights. In the formation of modern democratic institutions there are discernible two very different attitudes of revolt from the feudal system of established class interests; in the earlier stages the two work together, but later their latent contradiction appears. One is the democratic idea, the other the opposition of the growing interests which industrial development has stimulated, the interests of manufacturing and trading groups seizing their opportunity to dethrone the interests of the landed class. The feudal system of estates was a system of interests adjusted to the domination of property in land. The growth of other forms of property required a modification of the system but not necessarily of the principle. The "divine right of kings" was with relative ease transformed into the "divine right of freeholders." The English Revolution of 1688 was simple because it merely extended to a slowly increasing class and a slowly changing situation the old principle that the property of the country should govern it. Writers like Locke and Harrington were not revolutionary prophets but new interpreters of the old doctrine of the political role of property interests. Their social contract individualism was sharply limited by their theory that the state exists for the preservation of property. With the industrial changes of the later eighteenth century the concept of interests ceased to be formulated in the simpler terms of homogeneous "property." The new economic interests evoked by the industrial revolution revealed a different kind of struggle, which has continued with additional complications up to the present.

On the other hand, the democratic idea in its pure form was essentially opposed to the interest principle. It translated the doctrine of natural rights into the "self-evident" maxim that "all men are created equal" and drew from it the conclusions which Locke and others who had used the same language had conveniently refused to draw. This was the principle the uncompromising logic of which was enunciated by

Rousseau. It was the principle which inspired the Declaration of the Rights of Man and which in revolutionary France abolished all corporate interests within the state. It was the principle of the Declaration of Independence. It was in a later form the Benthamite principle that every man is to count as one and that the greatest happiness of the greatest number is the goal of the state.

The conflict of these two doctrines received much illumination in the course of the eighteenth and nineteenth centuries. The groups which were seeking political power were ready for the time being to enlist under the democratic banner, but when the battle was won the victory proved generally to belong to the interests represented by these groups rather than to the people as a whole. One of the most significant illustrations of the initial convergence and later divergence of the two doctrines is afforded by the events following the American Revolution. It is seen in the transition from the language of the Declaration to that of the constitution. Historians of the school of Beard have stressed the part played by economic interests in the framing of the constitution and in the struggle between the Federal and the Republican, or Jeffersonian, party. They have maintained that if Thomas Jefferson still employed the language of the Declaration after the development of the Federalist-Republican schism, it had become the language of agrarian protest against capitalist control. It need not be assumed that the ideal of democracy as enunciated by John Adams or by Jefferson had no vitality in its own right; but certainly the evidence is good that it was serviceable also, because of its vitality, to the protagonists of struggling interests. So far as the framers of the constitution are concerned, they have left no doubt as to their conception of the role of interests. They recognized that "a landed interest, a manufacturing interest, a mercantile interest, a moneyed interest with many lesser interests, grow up of necessity in civilized nations, and divide them into different classes, actuated by different sentiments and views" (Madison in *The Federalist*, no. 10). They recognized that this conflict of interests creates the problem of government and is the origin of factions or parties. But they thought that this conflict must be held in check and some balance of interests must be established in the very framework of government.

The question as to how far the state is based on group interests, whether thought of in terms

of class or of economic function or of territory, and how far on the general interest of a whole community has been a prominent issue in modern political theory. The followers of Rousseau, the school of Fichte and Hegel, have insisted on the subordination of group interests to universal state purposes. Some present day writers, such as M. P. Follett, take the same point of view (for example, in *The New State*). Others maintain that the state while deriving cohesion from interest groups is in principle above them and is ideally the impartial arbiter of their claims (Hocking, W. E., *Man and the State*). The opposite point of view is represented by such writers as Bentley, who in his *The Process of Government* claims that political issues are inevitably determined by the strength of group pressures. The adherents of the Marxian school go even further and assert that the state is essentially for the domination of one class over another; they lay stress on the solidarity of the controlling capitalist interest in the modern state. The Marxist ideal, however, points to a coming socialist state which will be essentially classless and in which the interest principle will be overthrown. The Soviet experiment has tended to give a new emphasis but also a redirection to this ideal. A somewhat different conception is held by such writers as Duguit, Benoit and Cole, who have maintained that the reorganization of the state through the representation of purely functional groups would restore to the machinery of government a reality which the "democratic" system of territorial representation lacks and would also make possible a more effective coordination of these interests within the whole. Since, however, interest groups find an important means of expression and influence through political parties and since political parties seem an inevitable condition of any democratic system, the efficacy of these proposals remains doubtful. Both the fascist and the socialist conceptions of the state assume the coercive abolition of political parties.

In economic theory the concept of interests has not been so prominent. In earlier stages this was perhaps due to the identification of economics with "political economy." The cameralists and the mercantilists took their stand on the solidarity of national economic interests. The physiocrats did work out a system of economics based on an assumption of the relative social utility of interest groups. Although Adam Smith had on occasion referred to group interests, to the classical economists they were unimportant

for the explanation of economic phenomena as compared with competitive individual interests. The historical school of economists, however, stressed the role of the group rather than that of the individual and in studying the rise and fall of institutions necessarily paid considerable attention to the conflict of interests. Socialist economists tended to stress interests even more strongly but for the most part limited their attention to the interest complexes of broadly defined social classes. The possibility of a more thoroughgoing study of the economic role of interest groups as such is suggested by the work of economists like Sombart and Veblen. Furthermore alongside the more formal studies of economic theory there have always been studies of practical economic problems and of economic institutions, in which the question of group interests has generally been accorded considerable attention.

In the theory of law interests have generally been considered as sources of conflict requiring readjustment through social agencies. From this point of view judicial decisions and the law behind them constitute a specially sanctioned process for the peaceful settlement of conflicts of interests. Law is on this ground contrasted with customary and other non-legal modes of determination of the range of interests, and the development of law is attributed to the inadequacy of these modes as interests have grown in variety and in complexity. Under such conditions custom develops too slowly to keep pace with social changes and leaves too many "areas of discretion" which are productive of social disturbance. Voluntary agencies of adjustment although they play an important part are also quite inadequate, often lacking sufficient authority to compose the issue and often, when effective, tending to disregard the interests of members of society other than those who are directly involved in the dispute. John Dickinson has said: "No fact is more important for an understanding of social processes or of the development of agencies of social control than that a conscious adjustment of interests between numerous parties cannot shape itself initially through the spontaneous action of all the interested parties, but must ordinarily result from the special efforts of some external agency . . . charged with the task of surveying the situation as a whole and devising a plan." Such an agency not only is authoritative but also can adapt its determinations to the requirements of each changing situation.

Some writers on the theory of law have given

a greater reality and concreteness to the old conception of legal rights by translating them, in the language of Ihering, into "legally protected interests." Rights, in other words, become a particular species of social interests, selected for recognition and confirmation by legislation and judicial decision. This idea has in turn led to the concept of the state as essentially an organization for the determination and adjustment of the interests operative within a society. By Krabbe, for example, the state is conceived as a regulatory power over interests, in consideration of the necessity for the continuous adjustment of these interests for the sake of practical harmony. The state, in his view, should be regarded not as the "possessor of public interests" but as a complex of agencies which administer a series of public services and of organs which generally bring into a workable system the various conflicting interests of the community. This process Krabbe speaks of as "an evaluation of interests," although in interpreting this statement the saying of Korkunov should be borne in mind that "law is the determination, morality the evaluation of interests."

In the field of sociology and social psychology the term interests has also had considerable vogue. From the beginnings of modern systematic sociology writers have sought to distinguish and classify the various aims or strivings of human beings which give rise to the varieties of social phenomena and especially of group behavior. Herbert Spencer dealt with what he called the "internal factors of social phenomena," and Lester Ward sought to classify "social forces." Ratzenhofer employed instead the term interests, being chiefly concerned to show how variant or antagonistic interests of individuals and groups explain or illustrate his theory of social conflict. This usage was adopted by Albion Small although for a different purpose and was popularized by him among American sociologists. Small offered his own classification of interests; and various other writers, such as Ross, Ellwood and Hayes, engaged in the same task. Their definitions of the term were essentially psychological. Thus Small said that "an interest is an unsatisfied capacity corresponding to an unrealized condition, and it is predisposition to such rearrangement as would tend to realize the indicated condition" (*General Sociology*, p. 433). His own list reduced itself to the following: health, wealth, sociability, knowledge, beauty, rightness. The crudity of this list is obvious; and, while it was improved upon by the other writers

referred to, the difficulty of finding a basis for classification remained. Nor was the attempt to explain social phenomena as expressions or embodiments of specific interests particularly successful. Moreover a fundamental difficulty lay in the confused application of the term at once to the subjective phenomena of motivations or desires and to objective phenomena, such as wealth. For this reason MacIver has proposed that a clear distinction should be drawn between attitudes or states of consciousness, on the one hand, and interests, or the objects toward which these states are directed, on the other. The confusions and difficulties of the interest concept have led various sociological writers to reject the term altogether and to substitute such terms as values and wishes.

If the term interests is used with this objective significance as the correlative of attitudes, the concept becomes particularly useful in the explanation of the growth and change of social organization. Under more simple conditions of society the social expression of interests was mainly through caste or class groups, age groups, kin groups, neighborhood groups and other unorganized or loosely organized solidarities. The coherence of these groups was fostered by appropriate traditions—established interpretations, as it were, of the interests or values which the groups embodied. A social class, for example, sustained its relative dominance not simply by insistence on the merits of the interests which were peculiar to its members but indirectly by the translation of these presumed merits into an ideology of prestige and social function. The attitudes thus engendered in dominant and inferior groups alike both masked the group interest and helped to perpetuate it. With the advance of civilization interests are organized in particular associations and in this way become more specialized, defined and limited. In an industrialized society with its division of labor and its opportunity for widened contacts every interest of any proportions establishes an organization for its promotion. Many quite limited and selective interests are enabled to draw their scattered adherents into personal or impersonal relations over greater areas, while the more universal interests extend correspondingly the range and the size of their organization. Thus the most marked structural distinction between a primitive and a civilized society is the paucity of specific associations in the one and their multiplicity in the other.

This definite organization of interests reacts

upon the character of the interests as well as on the modes in which they are pursued. A broad distinction may be drawn here between like and common interests. Persons have like interests in so far, for example, as each seeks a livelihood for himself. They have common interests in the degree in which they participate in a cause, as the welfare of a city or country, which indivisibly embraces them all. The two types of interest are inextricably combined in their attachment to associations. Thus the like interests which lead to economic association are reinforced by the sense of membership in a corporate unity on the success of which the attainment of these like or distributive interests depends. Moreover the association gives a greater stability to the interests which it promotes. An organized interest, especially if it assumes the form of incorporation, achieves a certain continuity in spite of the fluctuating devotion and the changing composition of the membership.

With the increase of organization the conflict of interests takes new forms, and the problem of establishing some harmony between them thrusts new tasks upon the state. There are some interests which remain localized and others which have special local aspects. But on the whole the attribution of interests to localities, the principle on which the system of representative government has been built, has diminishing significance. Moreover, inasmuch as with the development of communications many of these interests, both economic and cultural, are organized on lines that transcend the boundaries of individual states, the regulation or protection not only of such interests as may be deemed more specifically national but also of those which have inevitably a wider range introduces considerations at variance with traditional ideas of the sovereign independence of states.

International conferences reveal on a larger scale that essential problem of the reconciliation of interests which every social organization, temporary or permanent, has to face. Every organization presupposes an interest which its members all share, and its task is to find a way of reconciling with or adjusting to this wider interest the conflicting interests of its component groups or individual members. While some attention has been given to this subject, for example, by the school of M. P. Follett, much remains to be done to clarify the nature of the problem, to analyze the varying forms which it assumes and to discover methods by which the larger interest of the whole group can be most

effectively maintained against the particular interests which divide it.

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*See:* SOCIAL ORGANIZATION; GROUP; CLASS; CLASS STRUGGLE; STATE; PARTIES, POLITICAL; BLOC; PARLIAMENTARY; LOBBY; PLURALISM; FUNCTIONAL REPRESENTATION.

*Consult:* MacIver, R. M., *Society: Its Structure and Changes* (New York 1931) chs. iii, viii-ix; Hocking, W. E., *Man and State* (New Haven 1926); Coyle, G. L., *The Social Process in Organized Groups* (New York 1930); Bentley, A. F., *The Process of Government* (Chicago 1908); Krabbe, Hugo, *De moderne staatsidee* (The Hague 1915), tr. by G. H. Sabine and W. J. Shepard (New York 1922); Follett, M. P., *The New State* (New York 1918); Dickinson, J., "Social Order and Political Authority" in *American Political Science Review*, vol. xxiii (1929) 293-328, 593-632; Beard, C. A., *The Economic Basis of Politics* (New York 1922), *An Economic Interpretation of the Constitution* (New York 1913), and *Economic Origins of Jeffersonian Democracy* (New York 1915); Michels, Roberto, *Zur Soziologie des Parteiwesens in der modernen Demokratie* (2nd ed. Leipsic 1925), tr. by E. and C. Paul as *Political Parties* (New York 1915); Vebelen, T., *Imperial Germany and the Industrial Revolution* (New York 1915), and *The Vested Interests and the State of the Industrial Arts* (New York 1919); Ratzénhofer, G., *Die soziologische Erkenntnis* (Leipsic 1898); Small, A. W., *General Sociology* (Chicago 1905) ch. xiii; House, F. N., "The Concept 'Social Forces' in American Sociology" in *American Journal of Sociology*, vol. xxxi (1925-26) 145-72, 347-65, 507-25, 763-99; Marschak, Jakob, "Zur modernen Interessendifferenzierung" in *Soziologische Studien zur Politik, Wirtschaft und Kultur der Gegenwart*, Alfred Weber gewidmet (Potsdam 1930) p. 80-105.

INTERGOVERNMENTAL LOANS. *See* LOANS, INTERGOVERNMENTAL.

INTERLOCKING DIRECTORATES. Two corporations may be said to have interlocking directorates when one or more individuals are members of the board of directors, managers or trustees of both corporations. The practise of interlocking directorates has become increasingly widespread with the multiplication and growing complexity of corporate enterprise. At present few directors of important corporations are not directors in other concerns. The link between corporations formed by the interlocking of directors may be an important aid to management. At the same time it raises serious social problems with respect to the responsibility of directors and to the maintenance of competition.

From the purely business point of view and in terms of the interests of particular corporations the advantages of interlocking directorates

are threefold: the quality of the directorate may be raised by obtaining men of wider experience and connections or by increasing the experience and connections of the existing directorate; transactions between the two companies may be multiplied and made more profitable; and the rigors of competition between them may be reduced if not altogether eliminated and replaced by a measure of cooperation.

Since a board of directors is concerned primarily with problems of policy and control and a director's activity requires wide experience and judgment combined with extensive channels of information rather than large expenditure of time, a man with the proper qualifications can act effectively in the capacity of director for several corporations. The experience and knowledge gained in handling the problems of one corporation may redound to the benefit of other companies even in the absence of mutual business relations. Within narrow limits therefore a director may be more useful to his company if he is also a director of other important concerns. This is not the case, however, when one person holds membership on the boards of a large number of corporations; it is physically impossible for such a director to attend to his duties in all of the companies and he must perforce remain ignorant of many important activities of some of the companies. Where a director of this type is a person with a national reputation, as is all too often the case, he merely allows the use of his name to enhance the prestige of the company.

Of perhaps greater importance is the advantage which results from interlocking directorates where two or more corporations are in a position to have direct business transactions with each other. The presence of common directors can be used to gain advantage for one or both companies by insuring business on profitable terms and with the minimum of selling costs. It is not uncommon for a corporation to add to its directorate the president or another influential director of a company furnishing an important part of its raw materials or purchasing its product in large quantities. The market or source of supplies can thus be stabilized and the rigors of opposing self-interest somewhat curbed, although the relation may develop abuses in the form of preferential contracts and excessive prices. Interlocking directorates are particularly common between banks and other forms of business enterprise, since here more than in most cases a reciprocal service can

be rendered and new opportunities for profitable business created. A bank attempts to increase the number of its depositors and accredited borrowers, while an industrial or other company seeks a safe depository for its funds and an assured line of credit and banking support in times of stress. Each is a customer of the other and each supplies a service to the other. A similar dual relation may exist between a railroad and an important shipper. Through an interlocking director the railroad can protect its position against a competing carrier, while the shipper can be assured that his shipments will receive the best possible treatment; this type of interlocking has been particularly frequent between railroads and coal operators in the United States.

Finally, the rigors of competition between two companies may be reduced or eliminated through an interlocking director who serves as liaison officer between two companies, insuring that neither acts seriously to the detriment of the other and frequently bringing about a measure of common action. As the proportion of interlocking directors is increased the two concerns may act in common to the point of eliminating all competition.

Where a combination of competitors has been achieved, with the enterprises still retaining their corporate identity, the device of interlocking directors is used to unify policy and administration within the combination. Similarly the interests of a holding company in the subsidiaries under its control are represented by interlocking directors. The same device is used also by financial capitalists or large banking institutions to represent and unify their interests in the various corporations in which they own a substantial block of shares. The interlocking of directors is greatly complicated where the interests of financial capitalists are pooled through affiliation with the same banking institution, which in its turn may have independent interests in the same corporations.

From the social point of view the existence of interlocking directorates introduces two serious problems: the divided loyalty of a director of two companies which enter into business relations with each other, and the reduction or elimination of competition in a community which relies on competition as an instrument for the social control of business enterprise.

In his official capacity a director is a fiduciary and is required by law to act in the inter-

est of the owners of his corporation. A director of two companies which have business dealings with each other or other conflicts of interest is therefore placed in the anomalous position of a fiduciary with respect to both parties. The dangers inherent in this condition of divided loyalty have been recognized by the courts and certain safeguards have been developed out of the common law. In the United States "Transactions between boards having common members are regarded as jealously by the law as are personal dealings between a director and his corporation, and where the fairness of such transactions is challenged the burden is upon those who would maintain them to show their entire fairness" [*Geddes v. Anaconda Mining Co.*, 254 U. S. 590, 599 (1921)]. Where the boards of two corporations are almost identical, some courts have gone so far as to declare that agreements between them "must be deemed presumptively fraudulent unless expressly authorized or ratified by the stockholders" [*Pa. Knitting Mills Corp. v. Bayard*, 287 Pa. 216, 221 (1926)]. Under common law the burden of proof as to the fairness of intercompany transactions rests directly upon directors who are in a fiduciary relation to both parties. Even in the absence of fraud such transactions are voidable unless proved to be fair, and in some jurisdictions they may be voided at the option of either party regardless of such proof. The efficacy of these safeguards built on the common law has been greatly reduced with respect to many corporations by the so-called immunity clause in their charters; such a clause provides that no contract or transaction entered into by the corporation shall be affected by the fact that a director is connected with any party to such contract, so long as it is ratified either by directors not so connected but constituting a majority of those present at the meeting of the committee authorizing such contract or transaction or by a majority of stockholders having voting power. By these or similar provisions the duty of a director to show the fairness to both sides of a transaction in which he is an interested party would appear to be easily evaded, and the problem raised by the presence of divided loyalty would seem to be placed in much the same status which it held before the common law had been invoked. In European countries this aspect of the problem of the responsibilities of directors has been less serious than in the United States, partly because there is no charter mongering



by their political subdivisions to lower the legal restrictions on the action of directors and partly because in some countries the corporate organization tends to subdivide the functions of directors between a supervisory board with little power of action and a management board which performs the active function. Management boards are seldom interlocked; and while the supervisory boards of separate companies frequently are, the common supervisors have relatively little opportunity to affect relations between the companies.

More serious than the problem of directors' responsibility is that raised by the reduction of competition brought about by interlocking directorates, both when the concerns are doing business with each other and when they are competitors. In the first case competition is reduced indirectly by impairing the opportunity of the competitors of one of the linked companies to transact business with the other party to the arrangement. Less conspicuous and much more prevalent than the reduction of direct competition, this is perhaps the more serious of the two. No extensive investigations have been made or legislation enacted with respect to this form of "regulating" competition; yet it can be said that in a great number of cases where corporations not under common control are linked by interlocking directors, the purpose is in part to give one company (or both) an inside track over competitors in dealings with the other—to "cement their relations." This represents a very real step toward vertical integration in that buying or selling costs may be in part eliminated between the companies involved and the number of truly independent competitors may be reduced, thereby weakening the efficacy of the competitive market as a regulator of enterprise.

It is a debatable question just how far the interlocking of two otherwise competing concerns through their directorates tends to reduce competition between them. In the absence of other devices for maintaining common control a single director common to the boards of two companies is not in a position to impair seriously the competition between them unless he is either a dominant personality in one or both companies or is able to bring about actual agreements in restraint of trade between them, agreements which might have been accomplished as easily in the absence of a common director. When the number of directors in common is sufficiently large to make possible a radical re-

duction or elimination of competition, this usually indicates that two corporations are already under common control through some other device. The interlocking of directors is then a symptom and not the cause of common control and is an aid rather than an essential to the elimination of competition, which is presumably bound to follow the existence of common control.

In the United States an attempt has been made through legislation to limit interlocking directorates and prevent their interference with competition. Prior to 1914 interlocking directorates were apparently never declared illegal, but the courts in several trust dissolution cases prohibited for a period of years the interlocking of officers and directors among the dissolved corporations. The chief agitation, however, was against the use of interlocking directorates among the banks on the ground that they tended to promote a "money trust." In 1913 the congressional investigation by the Pujo committee disclosed extensive interlocking of directorates among the largest corporations, banks and insurance companies. The directors of eighteen major banks or investment banking houses (180 individuals) held 746 directorates in 134 companies with combined capitalization or resources of \$25,000,000,000. Following the popular demand which grew in part out of these disclosures the Clayton Act of 1914 contained provisions directly limiting interlocking directorates. Section 8 provided that no individual should be a director of more than one bank, banking association or trust company organized and operating under federal laws and having resources of more than \$5,000,000. An individual was also prohibited from being a director of such a bank if he were already a director of a state bank with resources of over \$5,000,000. Federal Reserve Banks were excluded from these provisions. The same section also made it unlawful for an individual to be a director of two or more corporations (other than banks and carriers) engaged in interstate commerce if at least one of them had capital and surplus of over \$1,000,000 and if the elimination of competition by agreement between them would constitute a violation of any provision of the anti-trust laws. The law, however, imposed no penalty for the violation of any of its prohibitions.

The great benefits expected to follow from the enactment of these provisions failed to materialize. Some of the larger banking houses did

immediately reduce the number of their interlocking connections. But on the whole the provisions of section 8 have been ineffective, partly because they have not been vigorously enforced and partly because dummy directors and other devices have been used to gain the same ends. Not once has the section been invoked in the courts nor has the Federal Trade Commission issued any orders to "cease and desist" under it. Interlocking directorates among financial institutions increased greatly in the post-war period; thus in 1929 the partners and directors in one investment banking house, two trust companies and three national banks, all in New York City, held over 2400 directorships in corporations with combined net assets of approximately \$74,000,000,000, equal to over 20 percent of the assets of all American corporations. The extent of interlocking among non-financial corporations is illustrated by the fact that in 1930 the directors of ten of the largest non-financial corporations held over 1850 directorships in other corporations. In both cases the large number of directorates reflects in part the increased use of holding and subsidiary companies, the directors of the parent company frequently being also directors of many subsidiaries.

More effective has been similar legislation with respect to the railroads and other carriers. By the Transportation Act of 1920 it was made unlawful for any person to hold the position of officer or director of more than one carrier unless such holdings had been authorized by the Interstate Commerce Commission. Between 1920 and 1928 the commission granted over 2500 applications, many legalizing the situation which existed at the time the act was passed, to hold such position in two or more carriers. The policy of the commission has been to refuse applications when the railroads concerned have clearly conflicting interests.

No legislation limiting the interlocking of directorates appears to have been enacted outside the United States. In other countries the public or political pressure to enforce competition has been far less strong and the problem of interlocking directorates, being one of the less important elements in reducing competition, has received little attention. In countries which have encouraged or at least not resisted the concentration of industry, such as Germany and Japan, there can be no objection to interlocking, which is extensively practised, on the score of suppression of competition. In England, the home of the competitive tradition,

interlocking directorates are frequent and have aroused some criticism but no legislative action. It has become an almost binding convention that the directors of the Bank of England should not be directors of other incorporated banks, although exceptions have been made. The charters of European corporations occasionally contain specific provisions against interlocking. In general, however, there is no opposition to interlocking directorates and they have increased greatly in Europe in recent years; among the causes are the growth of pan-European holding and finance companies and the increase in the affiliations of American and European corporations.

GARDINER C. MEANS

See. CORPORATION; COMBINATIONS, INDUSTRIAL; TRUSTS; HOLDING COMPANIES; PUBLIC UTILITIES; INVESTMENT BANKING; COMPETITION.

Consult: United States, Congress, House, Committee on Banking and Currency, Money Trust Investigation, *Investigation of Financial and Monetary Conditions in the United States*, 3 vols. (1913); Brandeis, L. D., "The Endless Chain" in *Harper's Weekly*, vol. lviii (1913) 13-17, and *Other People's Money* (New York 1914) ch. III, Loree, L. F., *Interlocking Directorates* (Washington 1914); Dixon, F. H., "The Economic Significance of Interlocking Directorates in Railway Finance" in *Journal of Political Economy*, vol. XLII (1914) 937-54, Stevens, W. H. S., "The Clayton Act" in *American Economic Review*, vol. v (1915) 38-54, Corey, Lewis, *The House of Morgan* (New York 1930) chs. xxx, xxxv.

INTERMARRIAGE. In every society, primitive or historical, personal choice of a mate from another group is regulated by group sentiments of approval and disapproval defined by the group's vested interests and its desire to perpetuate or enhance its prestige. Current evaluations of the ranking of other groups, cultures, castes, classes, occupations, nationalities, religions and races determine the degree of encouragement or discouragement accorded a prospective marriage. Hostile attitudes toward intermarriage, which are constantly changing in their direction and intensity, range from ridicule and scorn to tabus involving ostracism or death. Correlated with heightened group self-consciousness, fostered by ethnocentric leadership and perpetuated by isolation, these attitudes act as means of insulating the group, of preventing the dissipation of its forces and of preserving its traditions against the disintegrating effect of alien influences. On the other hand, intermarriages looked upon with favor by the group are those that it believes will extend its social, economic and political power and improve its status.

Marriage functions in primitive society as a means of effecting cooperation between small isolated groups in conflict, barter and ritual; and such marriages are arranged as are thought to advance these ends. Distinctions based on property and rank when present, as, for example, on the northwest coast of America, regulate the marriage choice, as do occupational discriminations in east African society, where the blacksmith is held in low esteem. In Roman society political caste and occupational considerations determined the range of intermarriage relations. Romans had *conubium*, or legal intermarriage, with neighboring Latin groups by special grants. *Conubium* was also permitted with some peregrines who were not Roman citizens or Latins but members of political communities which had acknowledged Roman supremacy and which had been absorbed or had been granted a measure of autonomy. No *conubium* with slaves was permissible and intermarriage between patricians and plebeians became legal only after 445 B.C. A freedman could not marry his patroness or the widow or female descendant of his patron, whether the woman was of senatorial rank or not; the extreme penalty for such an offense was condemnation to the mines. Senators and their descendants were forbidden to marry freed women or men and anyone who was or whose father or mother had been engaged in the theatrical profession. Soldiers, imperial officials and tutors lost certain privileges of *conubium* during the period of their employment. When Caracalla in 212 A.D. made full Roman citizenship a common status for free subjects of the empire he increased thereby the range of territorial and racial intermarriage.

In societies where religious ritual and ceremony give significant sanction to marriage and where the interest of the group is oriented around sectarian beliefs religious differences interfere with free intermarriage. Religious sects demand unreserved loyalty and their emotional appeals for group cohesion develop attitudes of zealous exclusion in the marriage relation with members of other sects. The antagonisms against intermarriage are intensified if the religious leaders are seeking to counteract the assimilation process concomitant with religious tolerance or if there has been a tradition of embittered conflict between the religious groups involved. Economic and political factors determine and modify religious prohibitions to intermarriage, which are likewise tied up with provincialisms and national and racial consciousness.

Christianity has since its inception established impediments to marriage with those outside of the faith. On the authority of passages in the New Testament (*II Corinthians* vi: 14) and the utterances of the church fathers St. Cyprian and Tertullian the Council of Elvira (300-306) forbade Christian girls to marry "infidels, Jews, heretics or priests of the pagan rites." The Christian emperor Constantine in 339 prohibited all intermarriages between Christians and Jews and a statute of Valentinian, Theodosius and Arcadius enacted in 388 regarded such intermarriages as adulterous. The councils of Laodicea (343-381), Hippo (393), Orléans (538), Toledo (589) and Rome (743) reiterated the interdiction against the intermarriage of Christians with Jews, heretics and infidels and these prohibitions were incorporated in the Gratian collection. With the coming of the Reformation councils and synods in various parts of Europe extended these prohibitions to apply to Protestants; and popes, particularly Urban VIII, Clement XI, Benedict XIV, Pius IX and Leo XIII, inveighed against intermarriage with non-Catholics in vigorous language. The secularization of marriage laws and procedures, the increasing power of the civil authority over ecclesiastical authority in the regulation of marriage and the diminishing part played by religion in contemporary life have lessened the force of marriage impediments of the church, but they are still potent in religious communities. The revised code of canon law of 1918 reiterates the prohibition of marriages between individuals of "mixed religion" and "disparity of cult," but as a concession to the increasing laxness in the rigid enforcement of the impediments it permits such marriages if the non-Catholic party promises in writing that he will not interfere with the religious worship of the Catholic and if both parties promise that the children of both sexes will be baptized and reared in the Catholic religion. These conditions were rigidly insisted upon in 1932 in a letter issued by the church authorities who set as punishments for violations the annulment of the marriage, exclusion from participation in church activities, the denial of a church funeral and in extreme cases public excommunication.

After its secession from the church of Rome the Church of England continued to regard difference in religion as an impediment to marriage and annulled mixed marriages when made; it included among prohibited marriages those with Jew, Turk or Saracen. The Westminster Con-

fession of Faith published in 1647 declared that "such as profess the true reformed religion should not marry with infidels, Papists, or other idolaters." Ireland in 1697 passed "An act to prevent Protestants intermarrying with Papists," which provided that no Protestant woman who either possessed or was heir to any form of real property to the value of £500 should marry a Papist under the penalty of losing all her property—the act revealing economic factors underlying prohibitions against intermarriage usually concealed by the overtones of rationalization. An Irish law in 1725 made it a felony for any Papist priest or unfrocked clerk to perform a mixed marriage and a statute in 1745 threatened those who celebrated such marriages with capital punishment. A declaration of the Federal Council of Churches of Christ in America in 1932, subsequent to the statement of the Catholic church on intermarriage, asserted that "where intolerable conditions are imposed . . . persons contemplating a mixed marriage should be advised not to enter it." Some Protestant sects have prohibited intermarriage with members of other creeds on pain of expulsion; all have brought pressure to bear upon their members to marry within their religious group.

The Mohammedan law of marriage according to the Maliki school ordains that the confession of Islam by the husbands is one of the conditions of all marriages. A Moslem may not marry a woman who is an unbeliever; but on the basis of the Koran (v: 7) an exception is made of a marriage to a *kitabiyah*, a free "scriptural woman," a term which designates Christians and Jews. Such marriages although legally valid are considered "abhorrent" especially in non-Moslem countries.

Jews have also consistently looked with disfavor upon intermarriage with non-Jews. Biblical injunctions against marriage with neighboring tribes and the demand of Ezra that the Jews after their return from the Babylonian exile put aside their foreign wives were used as authority for Talmudic prohibitions against intermarriage and by Maimonides, who incorporated the prohibition in his code. Exception was made by some rabbis if the non-Jew became a proselyte; in the codification of the *Shulchan aruch* the consensus of opinion was that such marriages should be exempt from the prohibition. The Jewish synod convened in Paris by Napoleon in 1807 decided that although intermarriages between Jews and Christians in accordance with the civil code could not be solemnized by the

religious rites of Judaism they were valid and not subject to religious anathema. The declaration of the rabbinical conference in Brunswick, Germany, in 1844, that intermarriage between Jews and Christians and with the adherents of other monotheistic faiths was not forbidden if the children were reared as Jews met much hostile feeling in Jewish circles as being too assimilationist in tone. The large majority of Reform Jewish rabbis have supported the traditional orthodox opposition to intermarriage as a threat to the survival of Judaism. The food customs and ritualistic observances of orthodox Jewry concentrated in enforced or voluntary ghettos, the barriers of antisemitism and nationalistic loyalties evoked by the Zionist movement have served to maintain group cohesion; in spite, however, of the tenacious efforts of a spirited leadership the rate of intermarriage between Jews and non-Jews is increasing. Drachsler's statistics of New York City, where the Jewish population was highly concentrated, showed the ratio of intermarriage of Jews between 1908 and 1912 to be 1.17 percent, among the lowest of the intermarrying groups; the rate varied widely, however, with the country of origin, and Jews of the second generation were found to have intermarried seven times more frequently than those of the first generation.

Extensive intercontinental migration has led to intermixture of races throughout history without biological detriment (see RACE MIXTURE). Such intermixture was sometimes unimpeded by social restrictions and at other times took place in the face of discrimination. Because color is especially conspicuous it has served as a primary criterion of race in laws against racial intermarriage, but where differences in color do not reflect historical or contemporary differences in culture, religion or economic status they do not hinder intermarriage. In Mexico and in Central and South America, for example, whites, Negroes and Indians intermarry without restraint. There has been wide variance in the attitudes of the Spanish and Portuguese, themselves mixed groups, and the English conquerors toward intermarriage with native populations. Wherever garrisons of soldiers are stationed in colonial countries large mixed populations result. Racial intermarriage is common in Malaya and in the Hawaiian Islands. The eight hundred castes and subcastes and the approximately five thousand local castes of India are not exclusively racial divisions but have also arisen from occupational and sectarian differentiations. In the United

States and in the Union of South Africa, the chief arenas of race conflict, whites as a means of retaining their economic, political and social domination have legislated against racial intermarriage (see MISCEGENATION). Neither the laws against racial intermarriage, which are found upon the statute books of twenty-nine states, nor the intensity of the caste sentiment against it has prevented the merging of races in the United States, as is shown by Herskovits' findings that 80 percent of Negroes show traces of mixture with whites or with American Indians. The miscegenation laws have, however, prevented Negroes from obtaining the legal and property rights which the marriage contract provides. The prejudice against intermarriage with orientals on the west coast of the United States is a reflection of the prevailing social discrimination against them. Racial intermarriage has increased in Soviet Russia in the wake of full political and economic equality accorded to all racial groups.

Commercial and administrative groups in foreign countries, especially in colonial lands where they are racially distinct from the native population, do not intermarry with the latter. Governing minorities, even when of the same race and with approximately the same cultures as the governed, hold themselves aloof; and when their status is threatened by intermarriage they enact against it—the Statute of Kilkenny (1366) forbidding the English of the Pale to intermarry with the Irish is typical of such legislation. Immigrant national groups transport to their new homes the national loyalties and the Old World customs, which are suffused with heightened appeal because of the immigrants' nostalgia and their impact with a hostile culture. In their segregated ethnic communities a strong sentiment prevails against intermarriage with its disintegrating influences. These are resisted most effectively if the immigrants are massed geographically, if they have effective nationalistic leaders to foster loyalties to the traditions and language of the group through systematic propaganda and education. But even if these factors are at work, intermarriage takes place; Drachsler found an intermarriage ratio of 14 per 100 with an increase of approximately 300 percent in the second generation, an increase which ranged from 100 percent to 1000 percent among the different nationalities. The ratio of intermarriage was highest among the northern, northwestern and some central European peoples and, with the exception of the Jews and Negroes, lowest among

the Italians and the Irish. De Porte, in his study of the marriage statistics of New York state exclusive of New York City between 1916 and 1929, found that the relative number of marriages of immigrants from southern and eastern Europe in which the bride was foreign born and the groom native increased six times in a decade and that the proportion of marriages of this group in which the groom was foreign born and the bride native was in 1929 greater than the proportion among the immigrants from Canada, northwestern Europe and Germany. With the multiplicity of cultural contacts afforded by facility of communication and mobility and with the decline in immigration it has become increasingly difficult for national groups to maintain the separatist attitudes nurtured by isolation in ethnic communities. The propinquity afforded by urban and industrial life develops personal associations that do violence to the traditional stereotypes that inhibit social relations leading to marriage. Class lines which were important in marriage selection within the national and religious groups now function as the chief determining factor—the dominant economic classes seek to maintain their prestige and wealth by looking with disfavor upon marriage with persons from the lower social and economic levels. Intermarriage is also on the increase among foreign born dispersed in rural communities remote from the cohesive pressures of foreign nationalistic agencies. The fact that in the modern world marriage has become increasingly an individual matter, less dominated by parental control, has likewise accelerated intermarriage.

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See: SOCIAL ORGANIZATION; ETHNOCENTRISM; ETHNIC COMMUNITIES; RACE MIXTURE; MISCEGENATION; AMALGAMATION; ASSIMILATION, SOCIAL; CONCUBINAGE; MARRIAGE.

Consult: Corbett, Percy Ellwood, *The Roman Law of Marriage* (Oxford 1930) p. 47-51; Schenk, Francis Joseph, *The Matrimonial Impediments of Mixed Religion and Disparity of Cult*, Catholic University of America, Canon Law Studies, no. 51 (Washington 1929); "Protestants Study Problem of 'Mixed Marriages,'" in *Federal Council Bulletin*, vol. xv, no. 4 (1932) 17-18, *A Manual of the Law of Marriage from the Mukhtasar of Sidi Khalil*, tr. by A. D. Russell and A. A. Suhrawardy (London 1913) p. 37-39; Lecky, W. E. H., *Democracy and Liberty*, 2 vols. (new ed. London 1899) vol. ii, p. 177-90; Mielziner, Moses, *The Jewish Law of Marriage and Divorce* (2nd ed. New York 1901); Feldman, Ephraim, "Intermarriage Historically Considered" in Central Conference of American Rabbis, *Year Book*, vol. xix (1910) 271-307; Fishberg, Maurice, *The Jews* (London 1911) chs. viiix, and "Intermarriage between Jews and Christians"

in *International Eugenics Congress*, 2nd, New York, 1921, *Scientific Papers*, 2 vols. (Baltimore 1923) vol. ii, p. 125-33; Calhoun, A. W., *A Social History of the American Family*, 3 vols. (Cleveland 1917-19) vol. i, chs. ix-xii; Boas, Franz, "Report on an Anthropometric Investigation of the Population of the United States" in *American Statistical Association, Journal*, vol. xviii (1922-23) 181-209, and *Anthropology and Modern Life* (new ed. New York 1932) ch. iii; Drachsler, J., *Intermarriage in New York City*, Columbia University, Studies in History, Economics and Public Law, vol. xciv, whole no. 213 (New York 1921), and *Democracy and Assimilation* (New York 1920), De Porte, J. V., "Marriage in the State of New York with Special Reference to Nativity" in *Human Biology*, vol. iii (1931) 376-96; Herskovits, M. J., *The American Negro* (New York 1928), Reuter, E. B., *Race Mixture: Studies in Intermarriage and Miscegenation* (New York 1931), Wessell, B. B., *An Ethnic Survey of Woonsocket, Rhode Island* (Chicago 1931) pt. ii; Brunner, Edmund de S., *Immigrant Farmers and their Children* (Garden City 1929); Hubrich, Eduard, "Die Mischehenfrage in den deutschen Kolonien" in *Zeitschrift für Politik*, vol. vi (1913) 498-506.

INTERMEDIATE CREDIT BANKS. *See* FARM LOAN SYSTEM, FEDERAL.

INTERNAL REVENUE TAXES. *See* EXCISE.

INTERNATIONAL ADVISERS. The practise of employing foreign advisers and experts seems to have been an outgrowth primarily of the westernizing movement which swept over a number of countries in the Orient and Near East during the nineteenth century. In the period following the establishment of the Capitulations in Turkey and of extraterritoriality in China and Japan, European advisers or controllers came more and more into prominence, being in some cases employed, notably in Japan, to reorganize the administration of justice with a view to terminating extraterritoriality.

Advisers and experts from abroad have also been frequently invited to assist in reforming financial conditions so as to remove cause for foreign intervention or annexation. Because of their inability to meet the charges on foreign loans governments have often been forced, usually under pressure from creditors, to grant aliens certain powers in connection with the collection of customs and the administration of finance. Foreign advisers or debt commissions of this type have been given varying degrees of control over the collection of revenue in Egypt, Turkey, Greece, China, Haiti, Santo Domingo, Nicaragua, Salvador, Bolivia, Liberia and Persia.

In other cases governments have employed

military advisers or missions to aid in developing their military resources and in resisting the encroachments of more powerful neighbors. An early example of this practise was the arrangement whereby Mehemet Ali of Egypt in the period after 1815 took into his service a number of officers who had formerly served with Napoleon. In 1835 the sultan of Turkey, Mahmüd II, obtained the consent of the Prussian government to employ as military adviser Captain Moltke, who later became the famous chief of the Prussian staff. Forty years later Baron von der Goltz went to Turkey, where he spent twelve years in reorganizing the Turkish army. After the Taiping rebellion the Chinese government employed several Englishmen and Frenchmen in the supervision of arsenals. Within the past few years military missions have been sent to a number of countries: an Italian military mission to Ecuador and Albania, American naval missions to Brazil and Peru, an American military mission to Guatemala and British military and naval missions to a number of countries. From time to time France has had a number of military missions in Latin America and in the new states of central Europe, while Spain has organized the military and police systems of Salvador.

In addition to judicial, financial and military advisers scientific experts have been frequently engaged within recent years to instal modern methods of sanitation, agriculture, public works construction and engineering. The most extensive use of this type of foreign expert has been made by the Soviet government of Russia, which by 1930 had made contracts with nearly forty American firms and engineers whereby these concerns agreed to provide technical assistance in the construction of new plants, the installation of irrigation projects and the development of new industries. The Soviet government has likewise engaged a large number of individual foreign engineers, foremen and skilled workers.

Foreign advisers or experts have been employed during the past few years for a wide range of purposes. Brazil has employed experts in forestry, agriculture and town planning; Ecuador, in the customs, as advisers to the central bank, superintendents of banks, comptrollers general, experts in rice growing, vegetable and genetic pathologists, engineers in colonial agronomy, veterinary specialists, zoo technical experts and specialists in tropical plants; Chile, in education, health, central banking and finance; China, in the customs administration, salt gabelle, coast guard, government printing bureau, legis-

lative yuan, judicial yuan, Ministry of Finance, Ministry of Communications, Ministry of Railways, Ministry of Industry, Ministry of Interior, Ministry of Military Affairs, National Reconstruction Commission and River Conservancy Commission; Persia, as wireless experts, financial advisers, directors of national bank, administrators general of customs, technical health advisers, directors of antiquities, road and highway engineers, tea experts, agricultural and veterinarian experts, directors of printing plant and experts in the foreign office.

International advisers may be classified at present as of two main types. The first is the consultant who visits a country, studies the difficulties concerning which his advice is sought, prescribes a remedy and returns home, the responsibility for carrying into effect his proposals being left to the local government. Largely because debtor countries have often found it impossible to obtain foreign loans without first putting their house in order, consultants of this type have been concerned in the main with financial problems. Within recent years invitations to study the local financial systems have been issued by many countries to a number of well known authorities, such as Charles Rist of France, Sir Otto Niemeyer of England and E. W. Kemmerer of the United States, who has performed the services of a "money doctor" for about twelve governments. Usually the recommendations of the Kemmerer financial missions have related to the establishment of the gold exchange standard, the creation of a central bank of issue, the establishment of budget laws and fiscal control systems and the enactment of new tax measures. More striking examples of this type of financial expert were the members of the Dawes committee of 1924 and of the Young committee of 1929, both of which were composed of a large number of financial and business experts from various countries, who diagnosed the financial troubles of Germany primarily with a view to securing reparation payments.

As a result of the recommendations of consulting advisers a number of countries, particularly in Latin America, have carried out reforms which apparently have led to improvements in administration and made it possible to secure foreign loans. The practise is criticized in many quarters, however, on the ground that governments employ foreign financial advisers merely to obtain loans with no real intention of carrying out the promised reforms. Yet even in

such situations responsibility would seem to fall more logically upon the foreign bankers and the borrowing government than on the adviser who acts in good faith. It is also contended that no government can hope successfully to adopt the intricate financial methods of the leading countries merely as a result of recommendations by visiting advisers and that modern financial methods can be developed only as part of the institutional growth of a country. On the other hand, foreign advice in a difficult financial situation may have considerable psychological and political value, as was evidenced in the work of the Dawes reparations committee of 1924.

The second type of adviser or expert, the one who remains in a foreign country for a period of years either advising in regard to or actively participating in administration, is in many cases appointed as a result of the recommendations of the consulting type of expert. Many of the laws drafted by the Kemmerer missions provide for the appointment of a permanent body of foreign banking or financial experts. The Dawes committee recommended the appointment of three foreign commissioners to supervise the "controlled revenues," the railways and banks of Germany as well as an agent general of reparations and other foreign officials—constituting an organization which was set up by the agreements signed at the London conference of 1924 and which continued in operation until the adoption of the Young plan.

It is difficult to distinguish between those foreigners who serve merely as advisers and those who actually assume responsibility for administration. The tendency generally is for an adviser to become, at least in extremely backward countries, an administrator. Many controversies have arisen between governments and advisers over the scope of the functions of the latter. In those instances where a government employs an adviser merely to secure a foreign loan or to satisfy the political demands of a great power it usually pays little attention to his recommendations unless he is the official representative of an outside government, as in the case of the American financial advisers to Haiti and Liberia. Even where a government genuinely wishes to make progress, the role of an adviser is not easy. As a rule his powers are limited to persuasion, and whether he succeeds in bringing about reforms depends not only upon his technical knowledge but upon his personality and ability as an educator. A successful ad-

viser must be not only an expert but also a teacher and statesman endowed with infinite patience.

Many countries in the process of obtaining independence realize the desirability of foreign advisers. Egypt employs financial and judicial advisers from Great Britain, and it is not unlikely that Iraq after the recognition of its independence and admission into the League will employ a number of British advisers. It is also probable that India and the Philippines upon becoming self-governing or independent will wish for the same reason to make use of outside aid. On the other hand, growing nationalism and self-confidence often lead a country to reduce the authority and number of foreign advisers. The Nanking government of China, for example, has increased the Chinese personnel in the customs, salt gabelle and postal services.

Advisers have often been used by the great powers as a means of establishing control over or even of governing backward areas. Great Britain came to rule Egypt through a system of British advisers responsible to the British consul general at Cairo. Native rulers in Tunis and Morocco are obliged to take the advice of French residents general and other officials. In a number of areas in Africa, such as Uganda and Nigeria, the British government follows a policy of indirect rule in which responsibility is imposed upon native states, which are, however, subject to constant check by British administrators who are in a sense advisers. In the native states of India British advisers are also to be found, although they exercise less authority here than in the native states of Africa.

The extent to which the adviser may become an instrument of imperialism can be illustrated by frequent historical examples. In 1897 Russia and England engaged in a struggle over the question whether an Englishman should be financial adviser to the king of Korea. Neither government won this struggle, for in a protocol of 1904 Korea agreed to accept a Japanese financial and diplomatic adviser, which ultimately led to Korea's absorption by Japan. In the famous twenty-one demands of 1915 Japan asked that China employ Japanese advisers in political, military and economic affairs. Communism also advances its cause by the system of advisers. Thus M. Borodin became extremely influential in the Kuomintang government of China in the three years from 1924 to 1926. Sometimes governments have attempted to compromise these

rivalries over advisers by the sphere of influence system. In the unratified agreement of 1920 France, Great Britain and Italy promised that in their respective Turkish spheres France and Italy should have a "preferential" claim to supply advisers if the Turkish government desired assistance.

In an effort to eliminate the military influence of Germany the Treaty of Versailles (art. 179) provided that Germany should not send to any foreign country any military mission and should take measures to prevent German nationals from leaving her territory to become enrolled in the military forces of any foreign power. The Allied and Associated Powers agreed moreover not to employ any German military experts. Despite these provisions General Hans Kundt, a German military expert, was chief of staff in Bolivia until the 1930 revolution, while German experts have advised the Nanking government of China in military affairs.

There are a number of cases where a government torn between the demands of two rival powers will turn as a measure of protection to a supposedly neutral country for advisers. Thus Siam, which at one time feared the encroachments of Great Britain and France, has employed a number of American advisers since 1903. Fearing absorption by Russia and England the government of Persia in 1910 asked the State Department of the United States to recommend an adviser to assist in the reformation of its finances. The department responded with a list of possible candidates, from which the Persian government selected Morgan Shuster. Russia, however, sent an ultimatum to Persia, as a result of which Shuster resigned. Following an abortive agreement with England in 1919, which apparently would have resulted in a British protectorate, the Persian government again turned to the United States, this time employing A. C. Millspaugh, who had been a State Department official, as administrator general of finances. In 1927 he resigned and was succeeded by German and Swiss experts, all of whom were made subject to the Persian minister of finance.

Within its own sphere of influence the United States has employed advisers for political purposes perhaps to as great an extent as any other power. As part of the policy of "dollar diplomacy" the United States in 1907 concluded a treaty with the Dominican Republic which provided that the president of the United States should appoint a general receiver of Dominican customs and his assistants, who would receive



from the United States "such protection as it may find to be requisite for the performance of their duties." In 1915 the United States concluded a more far reaching treaty with Haiti which authorized the president of the United States to nominate a general receiver and financial adviser as well as officers to organize a constabulary. By virtue of the authority supposedly derived from this treaty the United States sent about two hundred Americans to take up positions in the Haitian administration, which, nominally at least, continued to be headed by a native president and cabinet. American financial advisers have also been nominated under authority of loan contracts between the foreign government concerned and American bankers. Thus in 1911 the Nicaraguan government signed a contract authorizing the appointment of an American collector of customs. In 1926 the Liberian government entered into a similar contract with the so-called Finance Corporation formed by Harvey S. Firestone whereby the State Department of the United States undertook directly or indirectly to nominate seven Americans to act in an expert or advisory capacity for the Liberian government. Within recent years American financial experts have been employed, often following consultations with the State Department, by the governments of Colombia, Cuba, Guatemala, Honduras, Panama, Peru, Bolivia, China, Ecuador, Hungary, Mexico, Paraguay and Poland. In an act of May 19, 1926, Congress authorized the president of the United States to detail officers and enlisted men to assist Latin American governments in military and naval matters. Today American officers are in command of the Haitian and Nicaraguan constabularies.

Because of the political implications of the national adviser and because his responsibility is often ill defined, there are many theoretical advantages in favor of the international adviser; that is, an expert selected to serve a foreign country by some disinterested international organization, such as the council or technical organizations of the League of Nations. The Provisional Finance Committee of the League has stated these advantages as follows: "Some countries which would be unwilling on grounds of prestige, to apply for advisers to particular governments, may be willing and anxious to utilize the services of an international and impartial body like the League of Nations for this purpose, and in view of the fact that the financial administration of certain States

is at the present very critical time in the hands of relatively inexperienced officers, we venture to think that an experiment in the direction indicated may be fruitful of good results." In 1922 the Albanian government asked the League Council to assist it in selecting a number of advisers, and the Council nominated J. D. Hunger of Holland as financial adviser. The Albanian government, however, largely because the League was unable to provide it with a loan soon repudiated his contract and turned to Italy, which has established a predominant influence over Albania by means of Italian loans and Italian advisers—a form of control which is the object of suspicion in the Balkans and throughout Europe.

As part of the League reconstruction plans for Austria and Hungary the League Council appointed a commissioner general to each country and also certain other foreign experts. The League health and transit organizations as well as the International Labor Office have likewise performed important services in advising governments. If the League of Nations grows in authority, the time may come when all advisers to needy governments will be appointed by and made responsible to international authority.

RAYMOND LESLIE BUELL

See: INTERNATIONAL RELATIONS; EUROPEANIZATION; BACKWARD COUNTRIES, IMPERIALISM; PROTECTORATE; SPHERES OF INFLUENCE; EXPERT.

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INTERNATIONAL AGREEMENTS. *See* AGREEMENTS, INTERNATIONAL.

INTERNATIONAL ARBITRATION. *See* ARBITRATION, INTERNATIONAL.

INTERNATIONAL, COMMUNIST. *See* COMMUNIST PARTIES.

INTERNATIONAL FINANCE comprises the network of transactions and institutions connected with the transfer of money or of credit from one country to another. The pecuniary claims of one country against another are settled to a very large extent by bringing into play the obligations of the creditor country to a number of other countries which in their turn have to meet the claims of the debtor country. The balance remaining after such international clearing must, however, be paid by the shipment of money (gold bullion) or postponed through some form of credit.

The transfers of money or of credit by one country to another may be described as tributes in the technical sense of the term and advances. Tributes represent unilateral payments of primarily political origin. They include contributions drawn by a mother country from its colonies; subventions paid by a metropolis to its dependencies; military subsidies paid by one government to another; war indemnities, such as the reparations payments; or obligations arising from a former state of dependency, such as the Egyptian tribute of £720,000 per annum formerly payable to Turkey. Advances represent loans granted by one country to another or investments made by one country in the economic activities of the other. Advances give rise to two international financial movements: at first from the lending and investing country to the borrowing and capital importing country and later, with

the beginning of payment of the service on loans and of the return on investments, in the opposite direction.

Several types of international advances may be distinguished according to the character of the parties to the transaction. In the case of intergovernmental loans the creditor and the debtor are both governments. Such loans played an important part during the World War, when the British government and later the United States government advanced funds to their allies. The guaranty by a government of a loan issued in a money market under its jurisdiction by a foreign government resembles in many ways an intergovernmental loan; the subject of the advance in this case is not money but the credit of the government with private lenders. Examples of this type are the Russian government loan made by English and Dutch bankers in 1820; colonial or quasi-colonial issues, like the Sudan loan of 1919; and the Austrian League of Nations loan of 1922. The most frequent type of international government loan in modern times is the borrowing from private citizens of foreign countries, particularly through the public flotation of government securities in foreign money markets. On the other hand, the most unusual form of international government finance is government ownership of property in foreign lands, such as the ownership of railroad lines in the United States by the Canadian government or the control of Suez Canal shares by the British government, or the grant of government credits to private concerns established abroad; government credits are rarely given to companies domiciled in foreign lands except to those operating in colonies, spheres of interest or regions approaching colonial status. The largest share of the total volume of international financial transactions, however, does not concern governments either as debtors or as creditors. Such transactions involve private citizens or corporations of one country lending to or investing in private enterprises in another country. They include long term loans and permanent investments as well as the great bulk of short term international financing, the total of which is enormous.

International financial relations are meant to be either temporary or permanent. The direct ownership of property in one country by persons or corporations of another country constitutes a permanent financial link. The international relationship created by foreign holdings of stocks, bonds and mortgages may be severed

more easily; when the stock exchanges function regularly and securities have an international market, the lines dividing permanent and temporary investments are rather blurred. Temporary financial relations typically arise in the course of trade between two countries. Acceptances and revolving credit are bound to be self-liquidating and short lived, as are also deposits of funds in foreign banks recallable on demand or at short notice and holdings of foreign bills of exchange. The volume of short term international credit has grown immensely in recent years; thus the net commitments of the London market alone were about £245,000,000 in March, 1931. But this is due not so much to a stupendous growth of international trade or of the need for financing it as to the hesitation of the capital exporters to invest for long terms. Since the World War the owners of capital have consistently preferred the comparatively lower yield that goes with the opportunity of withdrawal at a moment's notice to the risk involved in permanent investments at a time when stock markets do not function properly and governments are not always willing to respect contractual obligations.

Under normal conditions, when the fluctuations of foreign exchange rates are confined to a very narrow range, the international movement of short term funds is governed completely by the relationship obtaining between money rates in the different money markets: if rates in one market decline relatively to the rates prevailing elsewhere, funds will be exported; if rates rise, funds will be imported. The advances made through this mechanism by one market to another may be regarded therefore as equilibrium loans. Another type of short or medium term loan, characteristic of the post-war era, is the currency or stabilization loan advanced by one central bank to another with the object of enabling the latter to maintain or to reestablish the stability of its exchanges. From the point of view of economic function most of the advances made to private citizens or corporations and the advances made to governments for productive purposes must be regarded as development loans: they enable the borrowing country to develop its resources at a much quicker pace and at much smaller capital costs than would be possible were they to rely entirely on their own savings.

Development loans obviously enable the creditor country to draw a higher rate of interest—they raise the income of its rentier class and provide additional profits for its bankers. They

also open up new markets for its industries, at first because the proceeds of such loans are spent in buying industrial equipment from the creditor country and later because development loans provide the inhabitants of the borrowing country with new or enlarged incomes, which can be spent on purchasing imports. The widening of the markets for the industries of the creditor country raises the wages of its laborers and the profits of its entrepreneurs. Again, the development of new countries by means of such loans assures an increased supply of foodstuffs and raw materials, upon which the creditor country is enabled to draw by the return on its capital exports. The benefit to the debtor countries may be much greater. The economic transformation of a stationary non-capitalistic system in countries inhabited by primitive peoples cannot proceed without advances from abroad, while new countries settled by white immigrants need foreign capital to make the nation an efficient economic unit. Debtor countries have often artificially accelerated the process of their industrial development by raising tariff barriers against manufactured goods, thus forcing their creditors to finance not only non-competitive industries, such as railways, but also manufacturing establishments competing with the industries of the creditor country. From a purely economic point of view the result is probably the greatest misdirection of capital in which the modern world has indulged—the output of existing plants in the creditor country shrinks while new plants which represent considerable investments and which have at best a limited market enter an already crowded field.

The acquisition of property or claims to income by aliens has given rise to grave political problems, especially where the social traditions and legal conceptions of the debtor countries differ from those of the western world. The status of alien residents in such countries is regulated by special arrangements, which usually include the right of the foreign trading community to be subject to its own law and its own law courts as far as the transactions among its own members are concerned, while its transactions with the natives are subject to the jurisdiction of special tribunals and special courts. The abolition of these privileges, very objectionable to the native population, occurs only after the establishment of trustworthy native tribunals which can be charged with the application of native codes framed after western patterns.

Alien property is less secure than native even in countries of the same social and economic civilization. While it is fairly easy to make contracts fit into different systems of law, the impartiality of courts toward strangers is by no means everywhere assured. Where the creditor is a foreigner, national prejudice is likely to be aroused in times of stress; this occurred, for example, in 1931 and 1932 when the City of London was denounced by some labor leaders in New South Wales as the embodiment of rapacious capitalism. National prejudice of this sort, sometimes encouraged by special legislation, has often excluded foreigners from buying land or stock of important corporations with full voting privileges. It disregards the obvious fact that it is the creditors rather than the debtors who face serious dangers by placing their capital within the jurisdiction of foreign law courts and the grasp of foreign governments. The wholesale confiscation of foreign property during the World War has shown how serious this risk is.

The political aspects of foreign loans come to the fore when the debtor is unable to pay. The incapacity of individual concerns abroad to fulfil their obligations differs from individual bankruptcies at home only in so far as it may involve a clash of different legal systems; but where the debtors are large concerns of national importance or where numerous corporations break down simultaneously under the stress of an economic crisis, the possibility of their passing into the hands of foreign bondholders and the measures taken by the government of the debtor country to relieve the critical conditions of business raise political problems of international importance. Moreover the fear of bankruptcy may lead to the withdrawal of foreign short term credits and the sale by foreigners of long term investments at sacrifice prices; under such circumstances the currency system of the debtor country may be easily deranged, as very nearly happened in Germany in the summer of 1931. On the other hand, currency disturbances caused by faulty government finance may prevent even solvent debtors from fulfilling obligations contracted in foreign money. In either case resort is sometimes had to wholesale moratoria, which extend to foreign loans and undermine the confidence of the foreign creditor.

Far more serious friction is caused by the bankruptcy of foreign governments. Only in exceptional instances does it take the form of complete repudiation of debts; of this Russia is the classic example. More often a government

withholds for a limited period interest due on its obligations or funds it into another interest bearing obligation; sometimes it resorts to a forced conversion of its debt at a lower interest rate, a reduction of interest which may be achieved almost as effectively by the imposition of a coupon tax. Where government bonds held by foreign investors are in terms of the domestic currency, a generous inflation may materially reduce the public debt without an acknowledged breach of the government's legal obligations. Defaulting governments can rarely be sued in their own courts; and even if judgment were given against them, foreign creditors could hardly make use of it as long as they could not sell government property or attach government revenues. Although governments scarcely ever assume responsibility for the investments of their nationals in foreign countries they are often made to intervene when frictions connected with such investments lead to loss of life or to "denial of justice." In the case of comparatively weak states creditor countries have often employed naval demonstrations, occupation of ports or some form of blockade; even since the general recognition of the Calvo and Drago doctrines governments have used diplomatic pressure and occasionally direct military intervention. In the case of older and stronger states such measures are not available. The foreign creditor is then protected merely by the hesitation of the government to impair its credit standing. While the capital markets of the world are not thoroughly organized and while the various defense associations of foreign bondholders do not cooperate in every case, few governments are able completely to rid themselves of their old obligations; when they need new loans they must settle with their old creditors, although Russia seems to have succeeded in getting camouflaged import credits without compensating its old creditors.

The dominant fact, lost to a superficial view in the mazes of international finance, is that wealth and especially moneyed wealth is not merely a source of income but an embodiment of economic power. In national affairs the money power is under the sway of the national government, although in some cases it openly or secretly controls the government. In international affairs political and financial power are in separate hands; hence the variety of possible combinations, which ranges from sincere cooperation to bitter animosity.

Theoretically the foreign money lenders,

whether as individuals or as a body are interested in obtaining a higher personal income rather than in political domination. While their principal is safe and the promised return on their investment is secure their attitude remains passive; but passivity gives way to panic, which affects adversely general financial and business conditions, whenever either the principal or the return on the foreign investment appears to be in danger. As long as loans to foreign governments were made directly by the owners of the capital, the power which the investor could exercise was very limited; his position was vulnerable because the refusal of the debtor government to pay spelled his own bankruptcy. But under modern conditions the money power is wielded not so much by the owners of the money as by the intermediaries to whom they have entrusted it—the great banks and issue houses. With the development of the modern stock exchanges the amount of money available to the great lending institutions has increased enormously; and their influence has grown correspondingly, particularly since their own financial strength is no longer completely at the mercy of foreign governments. They have been able to evolve and to enforce a technically complete system for safeguarding the interest of the foreign creditors. States whose solvency or whose willingness to pay is doubtful have been forced to pledge certain revenues for the service of a loan; these revenues are paid in a separate account under the control of the creditor and supply sufficient surplus reserves to meet all possible contingencies. In other cases the administration of certain monopolies, as the tobacco monopoly in Turkey or the various safety match monopolies granted to Kreuger, are handed over to the creditors, with the double object of increasing the yield by efficient administration and of giving them complete security. The system of creditor protection reached perfection in Turkey before the World War and Egypt under Lord Cromer. The governments of these countries had contracted huge loans and squandered their proceeds with the result that the state budget was permanently unbalanced. The investment of the creditors could be saved only by the creation of a creditors' administration, on which the different creditor countries were represented proportionately to their commitments. It reorganized the country's finances and especially the administration of the revenues which were allotted to the debt service. The native government was outwardly maintained,

but the creditor countries insisted on the introduction of skilled advisers in all of its branches. After the war the principal financial features of these schemes were introduced in Austria and Hungary under the auspices of the League of Nations. In Germany this was done under the Dawes plan and some traces of it were retained even under the Young plan.

While foreign investors are interested mainly in the security of their claims, the governments of creditor countries have often used the financial power vested in their money markets for political purposes. Loans were offered and in some cases even obtruded on less organized nations for military or political concessions. Financial control was resorted to not merely for the purpose of rehabilitating the country and securing the creditors' rights but for getting control over its administration without having openly to assume political responsibility. In many cases there has been a quick transition from a loan made to a native ruler, originating in the wasteful splendor of his court and in the greed of an unscrupulous financier, to reorganization by a creditors' council, which in its turn has led to a protectorate that has easily developed into control equivalent to political annexation. In countries where the rivalry of the various nations made direct annexation virtually impossible, a creditors' council sometimes provided a useful form of international financial administration, which guaranteed financial security and a certain amount of economic progress without political control. International finance was thus made to provide a capitalistic substitute for political colonization and territorial imperialism.

In some cases international finance enabled native governments to develop the resources of their countries and greatly to improve their economic status. For the promise of a share of profits foreign financial interests were allowed to form corporations for the exploitation of railways, mines, oil fields, plantations and public utility services. Such corporations were sometimes strong enough to control the native governments. The De Beers company in Cape Colony in South Africa was for a long time in this position; and the connections of foreign finance with the Díaz regime in Mexico were intimate and unbreakable. While the profits of the foreign concession holders were accumulated in many cases at the expense of the native workers, the upper and the middle class of the backward countries participated in this newly created

wealth. Even where these corporations acted wisely, friction was bound to arise with the spread of modern democratic ideas. The friction often assumed the form of a conflict between labor and capital in countries which did not appear sufficiently advanced for such a class struggle; in fact it was a revolt of more or less backward native populations, wedded to old traditions, against industrialism, which was forced upon them by capitalistic development impersonated by foreign financial exploiters. In this case too financial power has been wielded not by the owners of the money but by people to whom it was entrusted, although the connection of the large shareholders with the administration of the companies is naturally closer than that of the bondholders with the issue houses.

The general adoption of the gold standard and since the World War the popularity of the gold exchange standard have given rise to new powerful influences in international finance. The central banks, which in most countries are supposed to be independent of the government although everywhere their connection with their respective treasuries is very close, are in a position to exert considerable influence on the international distribution of gold and thus to contract or to expand the base of the credit pyramid not only in their own country but also abroad. Ultimately of course the international distribution of monetary gold stocks is determined by the distribution of the world's income among the various nations, as effected through the adjustments in the balance of payments; but in the short run central banks can control the volume of short term loans, regulate the financing and the actual flow of commodities and affect thereby the movement of gold in and out of the country. The degree of control over credit which the central bank enjoys in its own country varies; more important in this connection is the fact that the power to affect credit abroad is vested only in central banks of the large creditor countries—at present the United States, France and England. The debtor countries are more or less dependent on them for the financing of their imports as well as for the maintenance or the restoration of the stability of their currencies. It is, however, only in normal times, when traders' decisions are decisively affected by small differences in profits, that the central banks might be considered powerful. In critical times, when confidence is waning and price fluctuations are apt to be large and frequent, the central bank may not be

able to enforce its policy. The declaration of a change in its discount rates no longer works automatically; in fact the raising of rates may be interpreted as a storm sign and may lead to huge withdrawals of foreign short term funds, with the result that an unwanted severe contraction of credit takes place if the gold standard is retained or a complete dislocation of the foreign exchanges sets in if it becomes clear that the reserves are not large enough to withstand the drain. The events of post-war financial history have shown that even strong central banks, like the Bank of England, are at the mercy of their countries' foreign creditors when the crisis is sufficiently acute.

Because central banks are powerless in times of crisis, they have been unable to control the flow of credit and the international distribution of gold by that close cooperation upon which they have embarked since the war. The need for organized and explicit cooperation after the war was created by the lack of recognized international leadership among central banks. It was assumed at the same time that the power of a central bank within its own country could be enhanced by assurance of cooperation from abroad. The cooperation of central banks was expected to provide a type of international financial control which would impose sane, healthy and reasonable international policies on the foolish political passions of nations. Some such hopes were cherished when the project of a "world bank" was being grafted on what was intended originally as a clearing house for reparations payments; it was to be a powerful international financial agency, acting for the best of mankind in a purely rational way and unhampered by political considerations. The actual creation, the Bank for International Settlements, has justified these hopes neither by its constitution nor by its performance. Its charter providing rather limited powers cannot be enlarged without the consent of every government concerned; and its activities, although highly beneficial in a modest way, can scarcely be interpreted as imposing the wisdom of international finance on the folly of national politics.

MORITZ JULIUS BONN

*See:* FOREIGN INVESTMENT; LOANS, INTERGOVERNMENTAL; PUBLIC DEBT; INDEMNITY, MILITARY, REPARATIONS; INTERNATIONAL TRADE, BALANCE OF TRADE; MONEY MARKET; INVESTMENT BANKING, BANKING, COMMERCIAL; CENTRAL BANKING, MONETARY STABILIZATION; IMPERIALISM; INTERNATIONAL ADVISERS; INTERVENTION; MORATORIUM.

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**INTERNATIONAL LABOR ORGANIZATION.** The International Labor Organization represents an attempt to integrate under governmental auspices the various aspects of an international labor movement which had been developing for over a century. In the early days of industrialism Robert Owen and other philanthropic employers, having become convinced that protective labor legislation although increasingly urgent could not be effective under the prevailing system of unrestricted national competition, proposed international regulation. Similar ideals and programs continued sporadically throughout the nineteenth century to exert influence in a few quarters; but the movement did not progress beyond the stage of resolutions, such as those drawn up by the Berlin Labor Conference of 1889. The founding of the International Association for Labor Legislation at Paris in 1900 marked, however, the beginning of a more coherent program. Under its auspices the Berne conferences of 1905 and 1906 formulated the first multilateral labor conventions, which

prohibited night work for women and the use of white phosphorus in match manufacture. In the years preceding the outbreak of the World War the association gained in prestige, coordinating and expanding its program of standardization and reform of labor legislation.

The war, which frustrated the preliminary work of the Berne Conference of 1913, acted as an unprecedented stimulus to the international labor movement; as a result of conferences between trade union organizations of the various countries it emerged from the war with a clearly formulated program of demands. Impelled by motives of gratitude for labor's wartime sacrifices as well as by an enlightened sense of precaution against the threat of Bolshevism, the peace conference of 1919 shortly after assembling in Paris appointed a Commission on International Labor Legislation, to which was delegated the task of outlining an international labor organization and a world labor charter. The report of the commission, based primarily on a draft submitted by the British delegation and couched in the current idealistic terms of social justice and universal peace, was accepted promptly and with but slight modification. In view of the general labor unrest it was decided to set the organization in motion as quickly as possible, and the first conference was held in Washington, D. C., in October, 1919, before the peace treaties came into effect.

While in 1920 the labor conference was held in Genoa, those in subsequent years have been held in Geneva, where the contacts of the Labor Organization with the League of Nations have been numerous and intimate, although it has constantly maintained its autonomous status. A state which is a member of the League is automatically a member of the affiliated organization; a state may, however, withdraw from the League and still maintain its standing in the more specialized body, as did Brazil; Germany and Austria, on the other hand, were admitted in 1919 prior to their admission to the League. In order that the decisions of the annual conference may conform to a reasonable degree with the anticipated attitudes of the various governments which will be asked to ratify and incorporate them into national legislation, and to satisfy the demands of the trade unions, a system of representation is followed whereby two government delegates, one from the most representative association of employers in the country and one from the corresponding association of workers, are appointed by the governments. In contrast

## International Finance — International Labor Organization 165

with orthodox international practise each of the four delegates votes individually, and the voting alignments have shown a marked tendency to follow group rather than national loyalties. The final decisions of the conference, which require a two-thirds majority vote and are arrived at in the greater number of cases by a process of compromise, are of two types. The more formal draft convention must be submitted within a limited period to the competent ratifying authority of each member. A state, once it has ratified such a convention and deposited its ratification with the secretary general of the League of Nations, accords the convention treaty status and theoretically exposes itself in case of violation to measures of control, such as investigation by the Governing Body or the Permanent Court of International Justice, and even to concerted economic pressure. The second, less stringent type is the recommendation, which does not require ratification, although information concerning its application must likewise be deposited with the secretary general of the League. In federal states where social legislation falls within the jurisdiction of the smaller units the draft conventions may be treated as recommendations. After trying several unsatisfactory systems of adopting conventions and recommendations the present "double discussion" procedure was evolved and first employed in 1927 and later revised in 1929. Under this system a first conference devotes itself to a discussion of national law and practise and may adopt draft conclusions. During the course of the ensuing year questionnaires covering the points raised in the draft conclusions are forwarded to the governments of all member states. When the conference reassembles the following year it is presented with proposed draft conventions or recommendations which represent an average position based on the replies to the questionnaire. The conference may then finally adopt a draft convention or a recommendation.

The small group of twenty-four representatives, known as the Governing Body, meets at least four times a year. Because of the importance of this body the determination of its membership has been a source of contention since the early years of the organization. As in the conference, the governmental representation is equal to that of employers and workers combined. Eight of these government representatives are permanently apportioned, according to the terms of the peace treaties, to the countries of chief industrial importance. The original selection of criteria for

determining this importance was contested by several excluded states; in 1922 an investigation carried out under the auspices of the Council of the League awarded these seats to Belgium, Canada, France, Germany, Great Britain, Italy, India and Japan. The other four government seats as well as the twelve functional seats, which are divided equally between employers and workers, are held for three years and are filled by the vote of the corresponding groups of representatives in the conference. Efforts of certain outlying states to counteract the predominantly European cast of the Governing Body by the introduction of geographical ratios have so far proved unsuccessful. This group of twenty-four, often working through small committees which contain the three types of representation, controls to a large degree the finances of the organization, draws up the budget, which is passed by the League Assembly, participates in the activities of the League in so far as they involve the conditions of labor and establishes the agenda of the annual conference. Moreover it works in closest cooperation with the director and deputy director of the International Labor Office.

The office collects and publishes information on the problems of industry and labor and conducts exhaustive research in collaboration with permanent or ad hoc committees of specialists and experts in the preparation of conventions and recommendations. Its well known investigations concerning social insurance, wages, production and conditions of work in coal mines are but the more notable examples of research which it is conducting in varied fields of industry, commerce, agriculture and migration. Its library is becoming an outstanding research center for specific labor problems.

While Americans took an active part in framing the labor section of the Versailles Treaty—Samuel Gompers was president of the peace conference Commission for International Labor Legislation—the United States is not a member and the American Federation of Labor has shown only moderate interest in the organization. Failing direct collaboration with the "most representative" American employers' and workers' organizations, important unofficial collaboration on industrial relations has developed. Americans have on occasion been connected with the International Labor Office and at various times have participated in the investigations of technical committees and conferences. Although the Soviet Union, the only other outstanding non-member, regards both the organization and the



League as appendages of western capitalism, the Soviets have for several years exchanged documents and scientific information with the office. The attitude of the great trade union organizations, such as the International Federation of Trade Unions with headquarters at Berlin, is friendly, although their representatives in the conference have had some difficulty in cooperating with members of the Christian trade unions. They have moreover because of unwillingness to recognize the Italian Fascist corporations made repeated attempts since 1922 to have the credentials of the Italian workers' delegate rejected by the conference. While the employers are often openly skeptical of the value of the organization, only the shipowners (the employers' representatives at maritime sessions of the conference) have gone so far as occasionally to refuse cooperation or to withdraw from the conference, as they did for a few days during the maritime session of 1929.

The thirty-one draft conventions and thirty-nine recommendations adopted by the conference during the period from 1919 to 1931 represent a definite trend toward the international codification of labor law. A cardinal objective of the Labor Organization is freedom of association as a preliminary to trade unionism and collective agreements. An attempt to frame a convention on this subject in 1927 failed because it did not go far enough to satisfy the workers' group, but the principle has been applied on several occasions in connection with the nomination of the workers' delegates to the conference. An equally dominant objective is the regulation of the hours of labor. The Washington hours convention of 1919 which provides for the eight-hour day and forty-eight-hour week in industry has, however, been ratified with extreme caution. The other conventions and recommendations include protective regulation of the conditions of labor among agricultural and industrial employees, women and children, forced native laborers, foreign workers, seamen, coal miners and others as well as provision for certain kinds of social insurance, industrial hygiene and inspection, the prevention of industrial accidents and the development of measures to combat unemployment.

Most of the constitutional difficulties of the organization have been solved. The procedure of preparation and adoption of conventions has been greatly improved and the technique of revising conventions after their adoption has been formulated and tried. Three broad problems

now face the organization: the elaboration of its code of labor law, the extension of the international network of ratifications and the effective application of conventions when ratified. The annual conferences assure a gradual evolution of international labor legislation which will fill the remaining gaps in the program outlined by the peace treaties and adjust national labor legislation to future economic change. X

It is difficult to estimate the actual effect of the organization's work on national legislation. The gradual accumulation of ratifications (454 had been deposited up to March, 1932) will no doubt continue and with a return of normal economic conditions will be greatly accelerated. But the fact that varying degrees of industrialism in the member countries and their already existing standards must be taken into account makes it impossible to gauge progress solely by the number of ratifications. Nor have ratifications in the less industrialized countries always meant elevation in the standard of living of the workers. On the other hand, members refusing to ratify on technical grounds have often maintained a relatively higher level of life for workers than ratifying governments. As ratifications accumulate and take effect, these inequalities may tend to become adjusted and the fear on the part of industrially advanced states of unfair competition from industrially undeveloped countries will probably diminish, thus removing a significant obstacle in the way of more rapid progress.

Perhaps the most important constitutional development in the organization is the application of expert observation to the annual reports which governments are obligated to submit under article 408 on the enforcement of ratified conventions. For several years this procedure has been bringing to light the failure of certain states clearly to conform their national legislation with ratified conventions, and gradual improvement may be observed.

The International Labor Organization has attained far more than its enemies conceded in its early years; but it has achieved much less than its friends thought possible. From the governmental standpoint there is little doubt of permanent support. Regardless of the conflict of interests sometimes observable in the debates between employers and workers in the conference, Governing Body and committees, their collaboration seems to be a stable factor in modern international life.

FRANCIS G. WILSON

See: INTERNATIONAL ORGANIZATION; INTERNATIONAL

# International Labor Organization — International Law 167

LEGISLATION; LABOR MOVEMENT; LABOR LEGISLATION AND LAW; LABOR, GOVERNMENT SERVICES FOR; FUNCTIONAL REPRESENTATION; FASCISM; LEAGUE OF NATIONS.

Consult: Hetherington, H. J. W., *International Labour Legislation* (London 1920); *Labour as an International Problem*, ed. by E. J. Solano (London 1920), Guereau, Maurice, *L'organisation permanente du travail* (Paris 1923); Mahaim, Ernest, *L'organisation permanente du travail* (Paris 1925), Périgord, P., *The International Labor Organization* (New York 1926); National Industrial Conference Board, *The Work of the International Labor Organization* (New York 1928), World Peace Foundation, "Industry, Governments and Labor," *Pamphlets*, vol. xi, nos. iii-iv (Boston 1928); Lorwin, Lewis L. (Levine, Louis), *Labor and Internationalism* (New York 1929); International Labor Organization, *The First Decade* (London 1931).

INTERNATIONAL LAW is a binding body of rules applied by and to states in their international intercourse. The rules rest partly on the assent of the states and partly on generally approved practise, assent to which is either presumed or, in respect of a particular state declining adherence, immaterial. International law is objective law after it has by time and experience acquired general recognition and application by international tribunals. The term international law seems to have first been used by Bentham, and it has almost entirely replaced the older term, law of nations.

The sources or agencies by which the rules of international law are formulated are either usage, giving rise to custom, or positive agreement or treaties. The difficulty with custom is one of proof. It is often determined only after submission of the issue to adjudication. It is always a troublesome matter to decide at what stage custom can be said to have become authoritative.

The evidences of custom are either documents tending to show what the practise of states has been or the writings of publicists to show general opinion or the decisions of international tribunals and national courts. The documents evidencing practise are treaties between particular states, municipal statutes and decrees, instructions issued by governments prescribing rules for diplomatic and consular officers, opinions of attorneys general and law officers on international subjects, diplomatic correspondence, the decisions of prize courts and other municipal courts, the history and record of international transactions, including the proceedings of international conferences. The writings of jurists have weight according to the authority of their authors; among the best evidences are the

resolutions of the Institute of International Law.

The principal treaties which establish international law are the great lawmaking treaties, which in so far as they are not merely a declaration of preexisting law are law only for such states as have ratified. Among important treaties are those embodying territorial settlements, so far as they concern the contracting parties, and treaties establishing administrative unions. Distinctions should be made between (1) treaties governing only two or a limited number of contracting parties, (2) general treaties binding a great majority of states and on matters of custom the others by implication and (3) a more or less universal rule of private law common to all or most civilized countries. The suggestion of an "American" international law as distinct from a universal international law, which attracted attention through the writings of Alvarez, is probably without substantial merit; admittedly certain problems are more important to the American continent than to Europe.

The sources of international law are thus more flexible and diverse than those of any municipal system. The method of its growth resembles that of the common law rather than the civil law, for it invokes as authority practise and precedent. The opinions of arbitral tribunals, now some thousands in number, are regarded as of primary authority; but any practise or opinion deemed to have weight may be legitimately used as persuasive evidence. The rules of evidence are not rigid. International law is therefore quite unhampered in its growth by restrictions of method or juristic technique.

Normally international law governs the relations of states. Not much time need be spent on the debate whether individuals are also subjects of international law. The word international would indicate that the rules govern nations. But individuals, pirates, recognized revolutionists, minorities, shippers of contraband, mandated territories, administrative unions, the League of Nations—all these are also the subjects of rights and duties declared by what is called international law. International law is a developing science. A movement is on foot to permit individual foreigners to sue a state under certain circumstances in an international forum, a privilege which would of course depend upon treaty. Is this relation between the individual and a foreign state still international law? Has the concept expanded so as to take in new topics? Was it too narrow in the first place? Are the "new subjects" merely the indirect objects of inter-

national law or are the new fields branches of public law affecting the relations of states with individuals? The answer depends on one's major premise and since it is definitional only is relatively unimportant.

International law constitutes but one aspect of international relations, in many respects not the most vital. The political competition for national aggrandizement, the acquisition or control of territory advanced or backward and of spheres of influence, the struggle for markets and raw materials, the quest for and grant of trade preferences, the height of tariffs and immigration policies, the size of national armies and navies—these factors, which to a large extent determine the economic and political relations of nations, have escaped up to the present time the control of international law. The scope of the subject is therefore limited to the legal and diplomatic relations between states in their treaty and what may somewhat inaccurately be called non-political aspects.

International law is thus concerned with the classification of states according to their degree of independence; their recognition and admission to the international community; the extent of national territory; the limitations upon national jurisdiction; rights upon the high seas and in international channels of communication and transit; the position of agents of the state, such as consuls and diplomatic officers; international ceremonial; extradition; the international responsibility of states to other states for injuries to aliens; the conflicting laws of citizenship; the conclusion, interpretation and termination of treaties; and means of redress for alleged injury, from pacific measures, such as diplomatic representation, mediation and arbitration, to the forcible prosecution of claims and interests leading up to war and including the vast complex of rules governing the relations of belligerents and neutrals in time of war. Within its limited field both in theory and in practise it is supreme, any municipal law to the contrary notwithstanding. Until many departments of state activity denoting political and commercial rivalry and reprisal are brought within its domain, the conduct of international relations cannot be said to be altogether controlled by law.

Aside from recent qualified experiments prohibiting war international law permits war, regarding it as something like a disease but expressing no moral judgment on the merits of the issue. The recognition of the legal rights of neutrals has indeed been regarded as one of the

crowning achievements of the nineteenth century. International law recognizes the legal validity of treaties imposed by physical force or duress, a type of contract which probably all civilized systems of private law regard at least as voidable. It recognizes the results of conquest. It permits imperialistic extensions of territory in backward areas and to insure temporary peace accepts inescapable facts. But so long as the gains derived by any nation from a successful assertion of physical force can secure legal sanction—and this up to the present time has been unavoidable—the system is necessarily somewhat immature.

Inasmuch as international law has been a growth responding to the need for regularized intercourse of states, it is natural to find that its roots go back to antiquity and that its development was influenced by the current learning of its many periods. Its origins lie in the intercourse of the Jews, the Greeks and the Romans with other peoples and it has early exemplification in the distinctions between friendly and enemy peoples, in the conclusion of treaties, in the conduct of war and the making of peace, in the exchange and protection of ambassadors and even in arbitration as developed among the Greek and later among the Italian city-states.

During the Middle Ages with a unitary church and emperor the rules for external intercourse were applied only among the Italian city-states, the Hanseatic towns and the feudal lords. The institution of chivalry came into vogue, but there was little need for interstate law. The Treaty of Verdun of 843 began the process of division in Europe; after the time of Frederick III (1440-93), the last of the emperors to be crowned by the pope, many Christian states arose. Then came the discovery of a New World, the scramble for possessions, the growth of sea trade, the respective claims to dominion over new land areas and over the sea, the break up of the empire, the Reformation, the system of independent states and the 'Thirty Years' War, which was ended by the Peace of Westphalia in 1648. Modern international law thus began with the rise of the European states system. Some regularized control of the competition arising from the intercourse of a group of so-called independent states became necessary, and the past was laid under contribution to furnish the materials for its ordered management.

Oppenheim lists seven factors before Grotius as preparing the ground for the growth of principles of international law: (1) the civilians, who

revived the study of Roman law and furnished to external relations the necessary analogies from private law, and the canonists, who furnished moral and ecclesiastical precepts; (2) the collections of maritime codes after the eighth century for the government of maritime commerce, which in turn nurtured the controversy over the freedom of the seas; (3) the leagues of trading towns for the protection of their trade and their citizens; (4) the custom of sending and receiving permanent legations; (5) the custom of standing armies, beginning in the fifteenth century, which hardened the rules of war; (6) the Renaissance, which revived interest in antiquity and in the philosophical and aesthetic ideals of the Greeks, and the Reformation, which promoted the spiritual influence of the Christian religion; (7) the numerous plans for universal peace.

The principal forerunners of Grotius, commonly called the father of international law because of his great work, *De jure belli ac pacis*, are Legnano, Vitoria, Soto, Suarez, Ayala, Bodin and Gentilis, all of whom made contributions of note. The importance of Grotius' work lies in the fact that it exerted so profound an influence not only on theory but on practise. Grotius' aim was to bring the practise of nations, especially in war, into conformity with what he called natural justice. He did not define the term. To the customary law developed by the practise of states he conceded obligatory force unless it contravened natural justice. In the peace settlements after many wars of the seventeenth and eighteenth centuries the opinions and doctrines advanced by Grotius and other jurists often found reflection.

Indeed publicists in the seventeenth and eighteenth centuries particularly exerted considerable influence on the development of the rules of law. Contemporary with Grotius was Zouche, who emphasized the customary or voluntary law of nations. The differences in approach gave rise to three different schools of writers: (1) the naturalists, who denied that there was any positive law of nations and declared that the latter is only a part of the law of nature, leading exponents of this school being Pufendorf, Thomasius, Rutherford, Barbeyrac; (2) the positivists, who rely on practise and deny any ethical or "natural" qualification, including in the main Rachel, Textor, Bynkershoek, Moser and G. F. von Martens; (3) the "Grotians," or "Eclectics," standing midway between the naturalists and the positivists, whose principal votaries were Wolff and Vattel. The idea of natural law as the

basis of a law of nations was fruitful in a period in which international rights and duties had to be deduced primarily from considerations of human reason and natural justice. The idea of natural law, however, also served as a sanction for the voluntary arrangements established by treaty. It thus prepared the way for the positivism which grew from the increasing reliance upon the treaty formulation of international rights that followed upon the many international wars.

International law after 1648 grew largely in the light of the rules adopted among the major powers in their negotiated treaties of peace or through prize courts and other institutions set up to determine international legal relations. The Peace of Westphalia produced the first great secular European conference and breaking down the theory of the unity of the civilized world opened the way to that conflict of nationalities and states which marks the present era. It inaugurated the conception of the European equilibrium through the balance of power, the guaranty of independence and the admission of Protestant states and republics on a par with Catholic states and monarchies. The wars of conquest of Louis XIV, which kept Europe in turmoil for half the seventeenth century, resulted in five important treaties: Pyrenees (1659), Aix-la-Chapelle (1668), Nijmegen (1678), Ryswick (1697) and Utrecht (1713). These with other treaties of peace established principles which find their place in the development of international law, such as the right of visit and search of neutral vessels by belligerents, the rule that free ships make free goods—not universally recognized until 1856—the necessity for blockades to be physically effective as a condition of their recognition by neutrals and a general extension of the freedom of the seas. In 1721 Russia entered the councils of Europe as a great power. The eighteenth century was marked by further wars and treaties of peace, which established political doctrines and not a little law. The peace of Aix-la-Chapelle (1748), Paris (1763) and Versailles (1783) emphasized the principles of the balance of power and rules governing the relations between belligerents and neutrals. The United States now entered the ranks as an independent state and was led by old colonial experiences to espouse vigorously the rights of neutrals, which through the First and Second Armed Neutralities of 1780 and 1800 had already obtained strong support from European powers.

The organization of the Holy Alliance and the

fear of its designs for the restoration to monarchy of the Spanish American republics led in 1823 to the Monroe Doctrine, a political principle of self-preservation, and to the doctrines of the recognition of de facto governments and non-intervention, which may be said to have become legal principles.

The Peace of Vienna aside from the moderation of its political terms made important legal contributions by extending the doctrine of the neutralization of strategic territories, by stipulating the freedom of navigation in international rivers, by establishing the modern scheme of diplomatic representation and by denouncing the slave trade. At the congress of Aix-la-Chapelle the law of nations was formally recognized as the basis of international relations and the maintenance of the status quo on the basis of legitimacy was posited.

The democratic upheavals of 1848 weakened the principle of legitimacy and gave rise to modern nationalism. Napoleon III developed it as a principle in France, from which it extended to Italy and to Germany; both of these nations were consolidated after wars. At the end of the Crimean War, when Turkey although still under the Capitulations was admitted to the family of nations, the epoch making Declaration of Paris (*q.v.*) of 1856 was promulgated. It abolished privateering and recognized generally that enemy goods on neutral vessels and neutral goods on enemy vessels are free from capture unless contraband and that blockades to be binding must be effective. Even powers that did not sign the Declaration, like the United States, recognized its validity in practise, and it is now generally regarded as universal law. The period that followed was marked by the growth of conventions for the amelioration of the cruelty of war. During the American Civil War in 1863 Lieber's celebrated *Instructions for the Government of Armies of the United States in the Field* (United States, Adjutant-General's Office, General Order, no. 100) was issued, and this has since become fundamental for land warfare. In 1864 came the Geneva convention for the amelioration of the condition of the wounded and in 1868 the St. Petersburg convention forbidding the employment in war of explosive shells beyond a certain weight. At Brussels in 1874 came the codification of the rules and usages of land warfare, which although unratified exerted much influence.

The period of political consolidation in Europe was followed after 1874 by the period of

dismemberment based on the so-called rights of nationalities, a movement which reached its apotheosis in the treaties of Versailles, St. Germain, Trianon and Neuilly. After the Russo-Turkish War of 1877 the Balkan states were set up and promptly became a source of conflict among the great powers. At the Berlin Congress of 1884 rules were laid down for the more regularized exploitation of Africa. The freedom of commerce, the neutralization of territory in the Congo district, the prohibition of the slave trade, the notification of occupations and the freedom of navigation of certain African rivers were stipulated. After the Sino-Japanese War (1894) and the gradual abolition of extritoriality in Japan the latter was admitted as a great power.

The third quarter of the nineteenth century was marked by the establishment of many international administrative unions, such as the International Telegraph Union (1875), Postal Union (1874), Protection of Industrial Property (1883), Copyright (1886) and innumerable others connected with navigation, health, transportation, commerce and labor.

The Hague conferences (*q.v.*) of 1899 and 1907 constitute a landmark in international law in that they codified or revised many of its branches. Their greatest contribution, however, was the adoption of rules of procedure for the arbitration of international disputes. The Permanent Court of Arbitration, before which some twenty cases had come by the end of 1930, was established at The Hague in 1899. The Declaration of London (*q.v.*) of 1909, ratified, however, by only a few powers, confirmed or adopted important rules relating to blockade, contraband, unneutral service, destruction of neutral prizes, transfer from enemy to neutral flag, enemy character, convoy, resistance to visit and search and compensation for breaches. An international prize court proposed at the Hague Conference, 1907, was never established because of inability to agree upon a method of selecting judges.

On the American continent the important Pan-American congresses of 1889, 1901, 1906, 1910, 1923 and 1928 and the Commission of Jurists at Rio de Janeiro of 1925 and 1927 for the codification of law considered or adopted lawmaking conventions on aliens, claims, arbitration, the recognition of new governments, boundaries, jurisdiction, corporations, immigration, diplomatic protection, extradition, freedom of transit, navigation and aviation, treaties, diplomatic agents, consuls, maritime neutrality, the

refusal to recognize the results of conquest and other subjects. A few of these conventions have been ratified by all the states and some by only a few, if any. But they marked a lawmaking trend and are not without importance as evidence of the growth of law. The Inter-American High Commission has fostered the adoption of numerous treaties facilitating trade and commerce. In 1907 a Central American Court of Justice was established, which lasted until 1918.

The twentieth century was moreover marked by four Hague conventions on private international law to facilitate legal recourse between country and country and by a large number of administrative conventions concerning the protection of health, wild life and agriculture and governing various aspects of transportation and communication. An increasing number of treaties embodying the obligation to arbitrate and conciliate disputes, with ever narrowing exceptions, also marked this period. Many of the rights of neutrals were violated by all belligerents during the World War, and a tendency on the part of some of the victors to dispute the validity of well established rules made itself felt.

The war exemplified a new weapon—false propaganda—which poisoned the minds of men and made wide negotiation difficult if not impossible. The Treaty of Versailles and its analogues of 1919 were the result. Through some of the practices sanctioned in that treaty, such as the confiscation of private property and the obligation of the defeated powers to compensate for all damage sustained by civilians regardless of source or wrongfulness, even including pensions, international law has suffered a setback, the extent of which cannot today be measured. But useful new principles were embodied in the treaties providing for the protection of minorities and in the mandates system. To offset the retrogressive tendency there has been a powerful movement in the form of the League of Nations theoretically aiming to make international relations more pacific and systematic and to minimize if not prevent future war.

It is an evidence of realism that in 1923 a conference at The Hague drafted a body of rules governing the use of radio and aircraft in time of war; but these have not been officially adopted as yet by any power. The post-war period has been marked by numerous efforts to consolidate peace, such as the Locarno treaties of 1925 and the Kellogg-Briand Pact of 1928. But they are all based on the preservation of the status quo regardless of its merits. The Kellogg-Briand Pact

is also encumbered by exceptions which render its utility doubtful. This peace movement has, however, made progress in the enlargement of the scope of obligatory arbitration of legal disputes at the behest of one of the interested parties only. The Permanent Court of International Justice established in 1920 has rendered over forty decisions, partly judgments and partly advisory opinions, to the Council of the League.

In 1930 an International Conference for the Codification of International Law was called at The Hague under the auspices of the League of Nations to resolve conflicts of nationality laws and to agree on the rules governing territorial waters and the international responsibility of states arising out of injuries to aliens. The conference drafted a convention dealing with some of the nationality problems but had to record its inability to agree on the other two subjects. Since 1919 there have been numerous financial and political conferences in Europe designed to bring some semblance of order into a disordered world. Many of these have arisen out of the Treaty of Versailles; perhaps the most important has been the series of conferences preparatory to the 1932 disarmament conference called to redeem the pledge of disarmament contained in article 8 of the Covenant. The success of most of these conferences has been limited.

In its juristic theory international law since the days of Grotius has struggled to reconcile its premises with the central realities of the European states system: the tremendous forces of democracy and nationalism. The constant changes in the internal and external organization of states emphasized the difficulties of the basic postulates which had obtained in international law since the Peace of Westphalia. These were contained in the doctrines of the independence and sovereignty of states.

The theory of sovereignty has impinged on international law in the assumptions that as law is the will of the state no rules of international relations have the force of law except by the consent of the state, and that as the state epitomizes moral values international law has only such validity as the state concedes. To explain the obvious fact that particular states have often been held bound without their consent and that the moral value of a rule has not been left to any individual state to determine the theory of auto-limitation was developed, by which the subjection of the state has been explained as voluntary. But a state which is bound only to the extent that it wishes to be bound is not bound at all, and the

experience of a century with international tribunals conclusively negatives any such conclusion. Law must be objective; and once it is recognized as a rule by international tribunals or majority practise, a state can neither refuse obedience nor be the judge of its moral value. A new state entering the community of states is bound immediately by all the rules of the organization. Its consent to any or all the rules is not asked. The assumption of the system is the equality of all states before the law; none can ask exemptions or favors.

If international law is entitled to be characterized as law—a question of definition—it must necessarily limit the omnipotence or sovereignty of the state. Austin was thus more consistent than Jellinek in denying the qualification of "law" to international law; for while both proclaim the ultimate sovereignty of the state as the source of law, Austin considers the law of nations as international morality only, whereas Jellinek explains its controlling character as resting solely on the will of the state, on autolimitation. Inasmuch as Austin demands of law that it be declared by a determinate sovereign, international law by definition could not be law to him but only moral precepts presumably not binding on the state when found inconvenient. The Austinians even assume that rules which rest on consent and agreement cannot be law, for only a sense of moral obligation makes them binding—merely another way of saying that they are not legally binding.

The fault is with the major premise. Only new international law derived from international legislation rests on express consent or agreement, and even then probably only for a comparatively restricted period would the unwilling state be able to deny the force of a rule generally accepted. But in the matter of customary international law, which embodies the bulk of the rules, neither complete consent nor agreement of states is necessary. Even Bodin, while an absolutist in the internal aspect of sovereignty, viewed external sovereignty as subject to the law of nations. Unfortunately many of his successors reversed the process; for they appear to regard sovereignty, viewed as a symbol of the state in international relations, as absolutely free from external restraint.

But no state can posit its freedom from the rules of international law. No state so professes. The mere fact that violations of international law occur and occasionally go unredressed is no evidence that the rules violated are not law, any

more than the no less frequent violation of municipal law is evidence of its non-legal character. International law is often uncertain; so is municipal law. The sanctions are somewhat different, but they are probably none the less effective and the interpreting agencies none the less active. International courts do not "enforce" international law; neither do municipal courts "enforce" municipal law. But the declaratory and binding decisions of international courts are observed and carried out with a uniformity equal to that prevailing in the case of municipal courts. The agencies for the enforcement of international law are not necessarily courts but other constitutional organs, usually the executive. The weakness of the system, which attracts a disproportionate amount of attention, consists in the inability to compel nations to submit their differences to a court and in the physical power of states, exercised on occasion without regard to law, to constitute themselves plaintiff, judge and sheriff in their own cause.

The World War and the resulting treaties punctured many illusions concerning the origin, causes, conduct, aims and accomplishments of the war. As a result there has arisen in some quarters a cynical contempt for international law. While naked force did override international law in many respects, mainly in the violation of neutral rights, the remarkable fact that in hundreds of instances international law was observed receives but little publicity.

The horrors of the World War have induced movements to abolish war, and attempts at its regulation have come to be regarded as an unfortunate admission of war's legality. Thus the jurists who take a functional view of international law, who hold that the provision of arbitral machinery should be the chief aim of international law, have looked with disfavor upon the post-war attempts of League agencies to secure its codification even where this codification means the introduction of not a little new law of a progressive character. But the exceptions to the Kellogg-Briand Pact constitute an almost universal admission of the legality of wars of "defense" and of the other wars excepted in the exchange of notes interpreting the obligations of the contracting parties. Thus there has also come a revival of the abstract distinctions made by Grotius and others between "just" and "unjust" wars, the privileges of normal belligerency to be extended to those who conduct the former but not the latter. How the two are to be distinguished and who is to be the judge are questions either

left open or to be decided by some League body. Those who would abolish war necessarily would abolish neutrality, which although once regarded as the most advanced stage of international law is frowned upon as unworthy, for war is deemed a crime to which no one can legitimately remain indifferent.

The League Covenant in articles 11 to 16 has sought to render war difficult by invoking the Council whenever war threatens and imposing the penalties of non-intercourse upon the nation which conducts war deemed by the Council to be aggressive. The definition of aggressor while apparently simple in the abstract is almost impossible of application, and unanimity of agreement in time of stress may well prove unachievable. It is probably fantastic to suppose that people having only a remote interest in the status quo can be made to endanger their existence in the pursuit of an abstraction, possibly undesirable. International law will have to go on with all its handicaps until the major nations realize that nationalism and the apparatus of nationalism are inconsistent with and destructive of an ordered world. Whether greater co-operation in regulating common interests, for which the machinery of the League is probably adaptable, can produce a deflation in tariffs, trade restrictions, attempted monopoly of markets and raw materials and other instruments of unfair competition and thus lead to a reduction of armaments and of war psychology and technique is still an unsolved question. That such deflation is essential to a more fruitful organization of the world and for the happiness of its people will hardly be denied. So long as each nation can determine the height of its tariff wall and the size of its armies, there is always danger of war. Reliance must be placed upon reciprocal agreements to curb the extreme manifestations of this liberty. The realization of the idea of a superstate—implying a surrender to an international body of control of tariffs, national policies, armaments—which would alter the position of nations to resemble the position of a state in the American union is probably remote. Until that time comes international law must be dealt with as it is; and yet attempts must be made to bring within its range those relations which now escape its control, to close many gaps, to deflate the causes of political competition and war and to persuade the nations to realize that cooperation even at the sacrifice of national self-sufficiency is a wiser and less costly exercise of independence than a recalcitrant insistence upon

one's own ambitions regardless of the common welfare.

EDWIN M. BORCHARD

*See:* INTERNATIONAL RELATIONS; INTERNATIONAL ORGANIZATION; INTERNATIONAL LEGISLATION; INTERNATIONALISM; DIPLOMACY; TREATIES; LEAGUE OF NATIONS; PERMANENT COURT OF INTERNATIONAL JUSTICE; PERMANENT COURT OF ARBITRATION; JUS GENTIUM; NATURAL LAW; JURISPRUDENCE; SANCTION; SOVEREIGNTY; EQUALITY OF STATES; CONFLICT OF LAWS; COMITY; WAR; WARFARE; AGGRESSION, INTERNATIONAL; ARBITRATION, INTERNATIONAL; NEUTRALITY; OUTLAWRY OF WAR; FREEDOM OF THE SEAS. See also articles on other specific questions of international law and biographies of important international jurists.

*Consult:* The general treatises on international law have always been very numerous. Only the leading treatises of which there are recent editions will be given here. The American treatises are: Fenwick, C. G., *International Law* (New York 1924); Hershey, A. S., *The Essentials of International Public Law and Organization* (rev. ed. New York 1927); Hyde, C. C., *International Law, Chiefly as Interpreted and Applied by the United States*, 2 vols. (Boston 1922); Stowell, E. C., *International Law* (New York 1931); Wheaton, Henry, *Elements of International Law*, 2 vols. (6th ed. by A. B. Keith, London 1929); Wilson, G. C., *International Law* (8th ed. New York 1922). The English treatises are: Hall, W. E., *A Treatise on International Law* (8th ed. by A. P. Higgins, Oxford 1924); Lawrence, T. J., *The Principles of International Law*, ed. by P. H. Winfield (7th ed. London 1925); Oppenheim, L. F. L., *International Law*, 2 vols. (4th ed. London 1926-28). In French is available the great treatise of Fauchille, Paul, *Traité de droit international public*, 4 vols. (Paris 1921-26). The most useful German works are those of Liszt, Franz von, *Das Völkerrecht, systematisch dargestellt* (12th ed. Berlin 1925); and Strupp, Karl, *Grundzüge des positiven Völkerrechts* (4th ed. Bonn 1928). Italian: Anzilotti, D., *Corso di diritto internazionale* (3rd ed. Rome 1928), French and German translations (Paris and Berlin 1929). The treatises of Hershey, Oppenheim, Fauchille, and Anzilotti are especially rich in bibliography. An extensive survey of the international law treatises of the various periods is contained in Stier-Somlo, F., "Völkerrechts Literaturgeschichte" in *Wörterbuch des Völkerrechts und der Diplomatie*, ed. by Karl Strupp, 3 vols. (Berlin 1924-29) vol. iii, p. 212-27. The general treatises should be consulted for the more formal aspects of international law, such as its sources and scope, and for the relation of international to municipal law.

For the history of international law see: Viswanātha, S. V., *International Law in Ancient India* (Bombay 1925); Siu Tchoan-Pao, *Le droit des gens et la Chine antique*, vol. i— (Paris 1926—); Phillipson, Coleman, *The International Law and Custom of Ancient Greece and Rome*, 2 vols. (London 1911); König, E., "Zum Völker- und Kriegsrecht im Altertum" in *Zeitschrift für Völkerrecht*, vol. xi (1918-20) 155-89; Ward, R. P., *An Enquiry into the Foundation and History of the Law of Nations in Europe*, 2 vols. (Dublin 1795); Wheaton, H., *History of the Law of Nations in Europe and America* (New York 1845); Laurent, F., *Histoire*



*du droit des gens et des relations internationales*, 18 vols. (Brussels 1861-70); Walker, T. A., *History of the Law of Nations* (Cambridge, Eng. 1899); Redslob, R., *Histoire des grands principes du droit des gens* (Paris 1923); Nippold, O., *Le développement historique du droit international depuis le Congrès de Vienne* (Paris 1925); Koster, J., "Les fondements du droit des gens" in *Bibliotheca vasseriana*, vol. iv (1925); Butler, Geoffrey, and MacCoby, Simon, *The Development of International Law* (London 1928). Such works as Phillipson, Coleman, *International Law and the Great War* (London 1915), Garner, J. W., *International Law and the World War*, 2 vols. (London 1920), or Mérignhac, A., and Lémonon, E., *Le droit des gens et la guerre de 1914-1918*, 2 vols. (Paris 1921) deal with the effects of the World War upon specific doctrines of international law.

Some works are devoted primarily to the theoretical development of international law as a science. Still of value are Kaltenborn, Carl von, *Die Vorläufer des Hugo Grotius* (Leipzig 1848), Bulmerincq, A. von, *Die Systematik des Völkerrechts von Hugo Grotius bis auf die Gegenwart* (Dorpat 1858), and Rivier, A., "Literarhistorische Übersicht der Systeme und Theorien des Völkerrechts seit Hugo Grotius" in *Handbuch des Völkerrechts*, ed. by F. von Holtzendorff, 4 vols. (Berlin 1885-89) vol. i, p. 393-523. The most prolific authority upon the theory of international law has been Ernest Nys, who has published *Le droit de la guerre et les précurseurs de Grotius* (Brussels 1882), *Les origines du droit international* (Brussels 1894), *Études de droit international et de droit politique*, 2 vols. (Brussels 1896-1901), *Les théories politiques et le droit international en France jusqu'au XVIII<sup>e</sup> siècle* (2d ed. Paris 1899), and *Le droit des gens et les anciens juristes espagnols* (Brussels 1914). More valuable for current use is Spiropoulos. The Italian writers are discussed in Pierantoni, A., *Storia degli studi del diritto internazionale in Italia* (2nd ed. Florence 1902) *Les fondateurs du droit international*, ed. by A. Pillet (Paris 1904) contains studies of the classic writers. The texts of the classics are being republished with translations and necessary critical apparatus in the *Classics of International Law* under the general editorship of James Brown Scott, vols. i-xii (Washington 1911-27).

In the history of the movement for the codification of international law the important names before the World War are Fiore, Bluntschli, David Dudley Field and Alvarez. The post-war codification movement is represented by many articles Baker, P. J. N., in *British Year Book of International Law*, vol. v (1924) 38-65; Visscher, C. de, in *Académie de Droit International, Recueil des cours*, vol. vi (1925) 329-455; Hudson, M. O., in *American Journal of International Law*, vol. xx (1926) 655-69; Scott, J. B., in *American Journal of International Law*, vol. xxi (1927) 417-50; Niemeyer, T., in *Zeitschrift für internationale Recht*, vol. xxxvii (1927) 1-10, Urrutia, F. J., in *Revue générale du droit international public*, vol. xxxiv (1927) 619-26, and vol. xxxv (1928) 133-43; Strupp, K., in *Zeitschrift für öffentliches Recht*, vol. vii (1928) 152-210; McNair, A. D., in *Grotius Society, Transactions*, vol. xii (1928) 129-41; Rauchberg, Heinrich, in *Zeitschrift für öffentliches Recht*, vol. x (1931) 481-526; Alvarez, A., in *Revue de droit international*, vol. viii (1931) 7-55.

For Pan-American particularism in international

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See also the bibliographies of related articles, particularly WAR, NEUTRALITY, PEACE MOVEMENT, INTERNATIONAL RELATIONS, LEAGUE OF NATIONS.

**INTERNATIONAL LEGISLATION.** The term international legislation may be used in two senses: to describe the process by which changes are made in international law through lawmaking treaties or conventions and to refer to the results of that process which have been embodied in the content of international law. The term has not been in very common use in the past and is still somewhat novel. Indeed legislation as a means of developing international law has been much neglected until recent years. Few of the standard treatises deal with it. Many writers repeat that there is no international legislature, and some therefore deny that there is any international legislation. Yet it is now beginning to be appreciated that there is a process by which states can join together to change or add to the

law governing their relations and that the multipartite treaties and conventions concluded during the last hundred years constitute an important part of the prevailing law.

The Congress of Vienna of 1815 may be taken to have inaugurated the process of international legislation. Although that conference was not convoked for any such purpose, advantage was taken of the opportunity afforded by the assembling of representatives of a number of states to formulate certain provisions of international law. The formulation took the shape of instruments binding only on the states parties to them; but these states were so influential and the formulations so desirable that some of them have come to be accepted as applicable to relations between all states. A protocol of March 9, 1815, supplemented at the Congress of Aix-la-Chapelle in 1818, served as the formulated law on the classification of diplomatic agents for a whole century and it still has influence. The Final Act of the Congress of Vienna established the principle of free navigation on the international rivers of Europe by the merchantmen of all states, and until the adoption of a new statute at Barcelona in 1921 it served as the basis of international river law. Similarly the Conference of Paris in 1856 formulated a declaration concerning the abolition of privateering which has since been respected by belligerents not parties and which is firmly embedded in the existing law.

It was not until the middle of the nineteenth century, however, that conferences of state representatives began to be held to deal expressly with current international needs not filled by existing law. The revolution in international society wrought by improvements in methods of communication and transportation then called for international cooperation on a new scale. Problems had arisen for a solution of which traditional conceptions and practises offered no aid. Nothing short of continuous legislative activity would suffice. This was possible only through ad hoc international conferences, at which multipartite international conventions were adopted. Gradually these conferences became more frequent, more and more states sent representatives, forms tended toward some standardization and in time the importance of continuity came to be appreciated, with the result that various series of conferences were established. In some fields conferences continued to be convoked by single governments, which came to regard it as their prerogative to initiate action in those fields. For questions of maritime

law the initiative was that of the Belgian government; for other maritime questions, that of the British government; for questions of private international law, that of the Dutch government. In some fields the responsibility was shared by all the states interested; and where administration during the intervals between conferences necessitated the maintenance of permanent offices, public international unions, such as the Universal Postal Union, were created. These unions established a periodicity in the holding of conferences and made possible cooperative and systematic preparation for international legislation in advance of the conferences themselves.

Such developments led inevitably toward a more general form of permanent international organization. The unions were the precursors of the League of Nations, which was established in 1920 "to promote international cooperation and to achieve international peace and security." The activities of the League of Nations have resulted in a great quickening of the process of international legislation. The sharing of responsibility for conferences has tended to displace the calling of conferences by single governments. Most of the older unions have continued their work, which has been greatly stimulated and in some cases facilitated by the work of organs of the League of Nations. In addition many new fields have been explored, many new forms have been developed and the importance of continuity has been more generally appreciated. The result is that attention is now being given to many subjects which had previously been outside the range of legislative consideration. Conferences have become more frequent, preparation for them has become more thorough, their procedure has produced fewer possibilities of friction, their legislative output has been greatly increased and conventional forms have become standardized. The League of Nations has ushered in a new era of legislative effort. The volume of international legislation produced during the twelve years from 1920 to 1932 exceeded that produced during the entire century which preceded 1914.

It is still true that there is no international parliament with authority to legislate for the world of states. The nearest approach to it is the Assembly of the League of Nations, which seldom adopts acts and which does not purport to legislate except with respect to the organization of the League itself. The International Labor Conference also has some of the characteristics of a legislative assembly. If there is no interna-

tional legislature, it does not follow, however, that there is no international legislation. As long ago as 1907 John Bassett Moore could say that "of all the achievements of the past hundred years, the thing that is most remarkable, in the domain of international relations, has been the modification and improvement of international law by what may be called acts of international legislation." The history of the past quarter century has merely emphasized the truth of his statement.

Legislative progress has been particularly notable in certain fields. Legislation concerning telegraphic relations dates from the Paris Convention of 1865, which has been followed by numerous instruments; the St. Petersburg Convention of 1875 is still in force, but the regulations annexed to it were modified in 1925. The Universal Postal Union, organized under the Berne Convention of 1874, now comprises practically all the states of the world; periodic conferences have endeavored to keep the convention up to date, the latest having been held at Madrid in 1920, at Stockholm in 1924 and at London in 1929. For weights and measures the Paris Convention of 1875, modified in 1921, has served to create a common language for the whole world. Numerous conventions have dealt with the protection of industrial property, the latest general convention, which met in 1925, having been ratified by a large number of states; and with the protection of literary and artistic works, concerning which the Rome Convention of 1928 has recently been brought into force. The conventions drawn up by the peace conferences at The Hague in 1899 and 1907, the various conventions on private international law representing the work of six conferences held at The Hague and the conventions on maritime law resulting from the work of the unofficial Comité Maritime International as completed by the diplomatic conferences held at Brussels are all excellent examples of the fruits of the legislative process. The six international conferences of American states, held between 1889 and 1928, have produced many legislative instruments, not all of which have been brought into force.

Since the World War the greater volume of legislative instruments has come from League of Nations conferences. The legislation effected by the Communications and Transit Organization of the League of Nations is notable. In a few instances legislative instruments have been promulgated for signature and ratification by the Assembly of the League of Nations, e.g. the

Slavery Convention of 1926, the General Act for the Pacific Settlement of International Disputes of 1928 and the Convention for the Regulation of Whaling of 1931. More frequently, however, special conferences have been held; various conventions on the opium traffic, on traffic in women and children, on traffic in arms, on traffic in obscene publications, on road traffic, on buoyage and the lighting of coasts, on counterfeiting and on unification of laws of bills of exchange have been concluded in this way. In the field of labor legislation only two conventions had resulted from a whole generation of effort before 1914; since 1919 the International Labor conferences have adopted more than thirty labor conventions, which have been brought into force by various groups of states.

The technical problems which arise in international legislation are legion. Most of the work in international conferences is done by technical advisers sent by the various governments. The technical legal problems require close attention, although there is a tendency to follow more or less stock legal forms. The names given to instruments frequently carry little indication of their special character; an instrument may be called a treaty, a convention, a protocol, an act, a statute or by some other name. Signature is usually followed by ratification, and states which do not sign may be permitted to adhere or accede. Definitive acceptance of legislation has been greatly encouraged by the insistence of the Assembly of the League of Nations and by the work of the Secretariat of the League of Nations. The latter publishes periodical lists of signatures, ratifications, adhesions, denunciations and other acts relating to such acceptance. Problems of language, of reservation and of revision do not always receive uniform solution. Yet on the whole standards are developing which are being followed with remarkable regularity.

MANLEY O. HUDSON

See: INTERNATIONAL LAW; INTERNATIONAL ORGANIZATION; LEAGUE OF NATIONS; INTERNATIONAL LABOR ORGANIZATION; INTERNATIONALISM; TREATIES; AGREEMENTS, INTERNATIONAL; CODIFICATION; SANCTION; HAGUE CONFERENCES; DECLARATION OF LONDON; DECLARATION OF PARIS.

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Institut für Internationales Recht an der Universität Kiel, 2nd ser., vol. II (Berlin 1929); *The First Book of World Law*, compiled by Raymond L. Bridgman (Boston 1911). Most of the texts of multipartite international instruments will be found in the League of Nations Treaty series, the British and Foreign State Papers, and *Nouveau recueil général de traités* in three series, ed. by G. F. von Martens, 20 vols. (Göttingen 1843-75), 35 vols. (Göttingen 1876-1908), and vols. i-xxiii (Leipzig 1909-31). For the texts of those concluded from 1919 to 1929, see *International Legislation*, ed. by M. O. Hudson, vols. i-iv (Washington 1931-). For current information see the *Treaty Information Bulletin*, published monthly by the United States, Department of State, since 1929; and the quarterly *Bulletin*, published by the International Intermediary Institute in The Hague since 1919.

INTERNATIONAL ORGANIZATION. International organization is a phase of the relations among the nation states of the world. Individual nations exist in widely dissimilar physical situations and develop different social conditions and national interests, which result in divergent national policies both domestic and foreign. Foreign policies, programs of action in respect to other states, consist of desires or intentions of affirmative action, such as acquisition of territory; of negative action, as the denial of entrance to aliens; or of prevention of action by other nations, as the defense of territory. The satisfaction of national interests and policies requires in some cases only passive toleration from other nations; in other cases active cooperation. Where the latter is true, the development and execution of an international policy—a policy held by two or more nations—become desirable. For these purposes the nations need a system of institutions and procedures whereby national policies may be communicated by one nation to another, socially synthesized (internationalized) and executed. This body of institutions and procedures is referred to by the now fairly familiar phrase international organization.

National policy is internationalized at two stages: at the time of formation and at the time of execution; and in three ways: by international means of expression, by control (restraint and expansion) of such policy and by provision for its execution. International organization provides opportunities and facilities for the expression of programs of national policy and for the statement of national needs, interests and demands, which it endeavors to harmonize. These may be controlled while in process of formation if facilities are available at the time for subjecting the nations concerned to international influence; or their execution by individual nations

may be so controlled. The process of control operates essentially by providing opportunities for possible bargaining or exchanges of concessions among the nations. Such action and hence the process of control may be developed by the nations to such a point that the exchange becomes very indirect and the institutions and procedures employed for the purpose of effecting international control tend to obscure the essential character of that process. The results consist of increased or decreased benefit, including restrictions or expansions of liberty of action, in the case of individual nations, and in unification of policy among several nations, with consequent unity of action. Finally, the application of national policies after they have been harmonized and the expression, development and application of international policy as it has thus emerged become the main task of international organization, overshadowing the earlier action of harmonization.

International organization is thus broader than international government, which consists essentially of control exercised over one or more nations by one or more other nations. Such control may be exercised by an overpowering general preference shared by the controlled nation, for example, for the maintenance of treaty obligation, or by some form of pressure, such as military force. Thus the preference of the coerced nation in some current controversy is overpowered by considerations of value extrinsic to the issue at stake but important to the coerced nation. A certain amount of such coercion, control or government exists today among the nations without violating theories or principles which might seem to render it impossible. In this sense there exists an organized international control community, or international state, although there is no world state or world government. In its origin and even in its further development international government in this strict sense of the term is an outgrowth and expression of voluntary international cooperation, but its ultimate development is far different from its beginning. On the other hand, international organization as a whole remains more extensive than this type of internationalization and includes immediate and completely voluntary co-operation among the nations, just as socialization in the individual state proceeds not only by state control, coercion or government but also by strictly voluntary cooperation among individuals even in matters to which the state turns its attention, such as health and social work.

A complicating factor enters the problem at this first stage of its consideration. Since a nation is a group of individuals, any relation between one nation and another may involve a relation between the two nations as such, between one nation and one or more members or nationals of the other nation or between one or more nationals of one and one or more nationals of the other. The relations, procedures and institutions set up for the purpose of socializing or internationalizing national policies and activities may be cast in such form as to deal with the policies and activities either of the nations as such or of individual nationals of various states. When the latter method is adopted individual nationals are invested with relations, rights and obligations or allegiances to nationals of other states, to other states themselves and to the international community or state directly without the intermediation of their own national state. Under any logical theory of law there could never arise any real although there might be many apparent conflicts of allegiance in this connection; but the situation, inescapably in view of all the circumstances, is undoubtedly complicated both in fact and in principle.

Another difficulty arises here also. The national state developed under conditions in which international relations were few and international antipathies strong. There resulted doctrines of national independence or of sovereignty (*q.v.*) and of the equality of states (*q.v.*) which held that no state could logically, ethically or legally be required by another state or other states acting singly or in common to do anything it did not wish to do. Such doctrines apparently make unanimous consent necessary at every step in international cooperation—a formidable obstacle to effective progress. It seems difficult to reconcile national sovereignty and international authority in such a manner as to make possible international government by majority vote.

Such reconciliation is, however, made possible by the doctrine of the original agreement. The doctrine of national sovereignty does not deny to states the right to consent to any measure—they may even accept the obligation to do in the future something which at that time they may not wish to do. Hence by an original agreement the state may consent to the future operation upon itself by majority vote of international authority and even coercion. It might go so far as voluntarily to surrender its entire sovereignty without violating the doctrine of sovereignty. Numerous examples of this reconciliation occur constantly

in the conclusion and execution of treaty agreements, in the practise of international adjudication and in all forms of international government.

By implication international organization is to be contrasted strongly with simple international relations and with international politics. International relations consist of the geographical, mechanical, social and political relations among nations. International politics is the interplay of the policies of various nations before any process of international harmonization has been initiated. This interplay takes the form of relations of conflict and coincidence, identity, contradiction and competition. International intercourse in trade, travel and communication of various kinds bulks large in international relations and provides indeed the fundamental basis for most international organization; just as international politics with the waste and friction it engenders constitutes one of the principal reasons for the establishment of machinery and methods for synthesizing national policies.

True international organization differs even from what is at times called private international organization or internationalism, which in reality is neither international organization nor indeed international in any proper sense of the term but rather primarily what may most accurately be described as private world living or cosmopolitanism. In trade, travel and communication of various sorts individuals in different nations act without reference to their legal nationality or place of residence, across national boundary lines or not, as their interests dictate. This is true also of the hundreds of so-called private international organizations which spring up to express this unofficial world life. Private individuals and organized groups in different countries join together to form "international," or world, organs, such as the Institute of International Law and the Rotary International. These organizations hold meetings, maintain permanent offices, publish proceedings and literature of all kinds, stimulate world unity and international cooperation and at times lead the way to the establishment of official international organizations. But they are not in themselves entitled to be so regarded, and they pay relatively little attention to official nationalism or internationalism and often challenge the claim of these to respect and loyalty.

International organization is thus not the only possible form of world order. A world state based upon the type of cosmopolitan society which has just been described would provide

one alternative; if official internationalism is encouraged by world living it is also threatened with being superseded if it does not progress swiftly enough, and more radical progressives in this field clamor for the world state today. Imperialism is another form of organization which might conceivably lead to world unity. In times of chaos many men's minds turn in this direction, but the spread of democracy and nationalism tends to limit its field of activity.

The basic motives for the development of international organization seem to be three: the desire of human beings for satisfactions obtainable only from beyond national boundaries, which gives rise to the whole body of international intercourse; the desire of national states and their component citizens and officials for effective international cooperation in the regulation of this intercourse and in connection with all the activities of the individual state, many of which seem strictly national in character but demand such cooperation for their successful conduct; and a similar desire to avoid international friction and violence. Ideal aims of insuring peace and justice among nations are based upon these concrete desires.

Even in the presence of such motives, however, international organization could not develop in the absence of certain prerequisite and favorable conditions. Thus there must be more than one state in the world; in a single empire, which might constitute a world state and a means of securing world order, there would be no room for international organization. Moreover the existence of many states rather than of a few increases the need for organized interstate cooperation, broadens its basis and promotes its development in many ways. Substantial equality among the states is desirable and gross inequality fatal to this cooperation. Similarity of situation, need and policy, at least in order that points of common interest can be found by numbers of states, is requisite; individual states must have breadth of interest and policy in order to enter fruitfully into international cooperation. Stability on the part of the individual states is necessary; where states rise and fall too rapidly the maintenance of a system of international organization is impossible. Obviously too these states must be in contact with one another. Finally, there must exist a science of international organization if these facts and potential causes and consequences are to be adequately realized, interpreted and acted upon.

The functions to be performed by interna-

tional organization may be classified according to two standards: first, the form; and, second, the substance, or subject matter, of the action to be taken. The forms of action in international organization needed by the nations have already been suggested. The irreducible elements in international organizational activity seem to be formulation of law by agreement, administration of the law by international agencies and adjudication of disputes by international courts, which is perhaps a form of administration. The actions of individual states toward one another have no element of true international cooperation unless the states agree among themselves on common lines of action; they are then making law by agreement. The operations of international organization may be essentially analyzed into the making and execution of law; where the carrying out of the law is remitted to individual states, as it often is, there is international action only in so far as that action also is regulated by international law.

Here arises the problem of international coercion, or sanctions, the most critical and the most difficult problem in the entire field. Enforcement of international law is now left to the individual state possessing rights under that law, and international law defines certain modes of action available for that purpose: non-violent measures of litigation in national courts, diplomatic action, litigation in international courts, violent measures short of war (reprisals and intervention) and war. Obviously objectionable features of this situation lead to the suggestion of a system of international enforcement; all sound logic and theory of social organization and the entire history of government among men point irrefutably to this end. Although almost insuperable political and technological difficulties obstruct progress in this direction, this ultimate problem of international organization and international government must eventually be solved.

With regard to subject matter the proper scope of international jurisdiction and action may be stated to include in principle all matters of international interest. These comprehend the entire field of national life, of which no aspect is not of international concern, for many alien nationals and much alien property are present in every state. There are no "purely domestic questions" in international affairs today after the composition and organization of the individual state have been determined, and even here international interest and regulation are beginning to trench upon national discretion. Legally recognition of

this principle and of its exact implications in terms of concrete questions is left to interstate practise and agreement. The states may lag as far behind the factual situation as the sociological pressure for group action against individual liberty allows.

In practise one subject after another passes over from national to international regulation. All of the interests of individuals who are engaged in activity outside their own nations or on the high seas are involved: protection of life, liberty and property; health, morals, transit and communications; industry, trade and finance; and scientific and artistic needs relating to all of these. Many of the same interests of concern to nationals within their own states—especially communications, health, morals and scientific and cultural interests—are served by international cooperation. All matters upon which the individual state develops its own policies, legislates and takes administrative action come up for international treatment of those points at which they are of interest to other states.

Underlying all such subjects are the interests and the demands for peace and security on the part of the individual state as such. Preservation of peace and the protection of territorial integrity and political independence of the state against external aggression are the two most fundamental and important functions to be performed by international organization. The first is attempted both indirectly and directly. The indirect method is to treat by legislation and administration the fundamental causes of international friction. The direct method in case of acute controversy involves the use of diplomacy, including the "good offices" of third states where diplomatic connections are severed; the organization and use of the processes of inquiry, mediation and adjudication, including commissions of inquiry, in reality a species of administrative agent, and councils of conciliation, a form of international conference, and including also of course international courts and tribunals of all kinds; and the development of agreements not to resort to war but to employ the stipulated forms of pacific settlement. The second function of international organization is attempted by encouraging the conclusion of non-aggression and even mutual assistance agreements, but the provision of an effective general international guaranty of security depends upon solution of the problem of sanctions.

It is possible to distinguish six special forms and one general form of international organiza-

tion intended to serve the needs of the nations and the international community. Of the special forms, three: diplomacy, treaty negotiation and international law, may be described as pre-institutional in character; and three: conference, administration and adjudication, as institutional. International federation is the general and final form of international organization.

Diplomacy (*q.v.*), essentially an extremely primitive form of international action, is the communication from one state to another of an item of information or policy. Such action may be taken by any agency entitled to act for the state, as the chief of state or a diplomatic representative; but historically the resident diplomat has become most prominent in the process and the diplomatic corps has approximated the character of an international organ. Treaty negotiation, which grows out of diplomacy, consists of the making of agreements between states; it partakes of the nature of contract although it rises eventually to the level of statute legislation and constitution making (*see* TREATIES). International law (*q.v.*) is the most effective of the primitive devices for international control of national policy and action and for effectuating international policy and action. It consists of rules accepted by the nations as defining with binding authority their rights and obligations toward one another. It logically follows treaty negotiation and diplomacy in that it can hardly grow up without interstate communication, is much aided by treaty agreement and is broader and more stable than either. The customary law is amplified by international legislation (*q.v.*) and systematized by codification. It covers logically all phases of actual interstate relations peaceful or otherwise, including the later forms of international organization, although the descriptive science of international organization is not part of international law.

Conference, logically the primary form of institutionalized or organized international cooperation, consists essentially of diplomacy and treaty negotiation but gains its final character and status by the multiplication of the number of nations taking part. An international conference is a meeting of one or more delegates from each country participating. Participation is determined in the case of the single conference by the invitation of the country initiating the action; in the case of the conference in series, by prior international agreement. Attendance is wholly voluntary. The conference is opened by the chief delegate of the state in whose territory

the conference is held, unless other arrangements have been agreed upon; the conference elects its chairman and other officers, including a secretary, and creates such committees as it sees fit. The agenda of the conference is settled, usually in advance of the meeting, by agreement among the participants under the leadership of the convoking country or in accordance with procedure for that purpose stipulated in advance, as in the drawing up of the agenda by a permanent bureau. The agenda may be altered only with the consent of all participants, unless otherwise stipulated; actually items are rather freely added in the course of the conference and the tendency toward this practise is on the increase. The conference operates through plenary sessions and committee meetings; the real discussions and negotiations take place in the latter. There is little voting even in the plenary sessions, although provisions for majority decisions in matters of procedure are increasingly common today. In principle and for the most part in practise the conference rests upon and respects the principle of equality and especially the rule of unanimity. The conference is thus similar in character to the legislature or constituent assembly. It frames international constitutions, such as the Covenant of the League, and adopts statutes, such as conventions on maritime navigation. But in few cases as yet does the conference operate by debate and majority vote of delegates at discretion; rather for the most part it proceeds by unanimous consent of instructed delegates by way of the conclusion of treaty agreements. Even with these limitations the conference is the most dynamic and creative form of international organization.

Administration and execution in international government are ordinarily entrusted to bureaus or commissions of two or more persons and at times to individual officials. Such agencies, as, for example, the Universal Postal Convention, which define the composition and organization of the agency and the scope and mode of the action to be taken by it, are established by conventions among the interested states. Ordinarily it is the terms of a treaty, rarely general international law and still more rarely an international judicial award which is to be administered. Most international administrative agencies are provided in connection with some specific subject matter, such as river navigation (*see* INTERNATIONAL WATERWAYS); but the creation of a general international administrative service capable of functioning in connection with what-



ever questions arise has already appeared in such bodies as the Pan-American bureau and the League Secretariat. Such agencies consist in principle and to a large extent in practise of persons chosen not as representatives of the nations but as individuals expert in the subject matter to be treated. Professional technicians and administrators rather than political amateurs are needed. On the other hand, the administrative agency is supervised and controlled more or less closely by the constituent governments and the general conference or interim committee of the union of states maintaining the bureau. The action of the bureau impinges upon the participating states as such, upon their nationals and indeed upon other states and their nationals when subject to the jurisdiction of the former states. In this respect international administration approaches true international government more closely than does international conference. It is at this point moreover that the question of compelling national or individual compliance with international authority, the question of "sanctions," arises.

International courts serve to settle international controversies which arise in the course of unorganized international relations or in connection with international administration and which can be settled according to accepted law or treaty agreement. Arbitration is the settlement of such questions by general principles of law and equity, adjudication proper their settlement by positive law; but the difference between the two is not great. International controversies are sometimes submitted by the disputants to an international organ for investigation of the facts (commission of inquiry). Such a commission must be created by agreement defining its composition, procedure and powers; unless specially stipulated it has no power to pronounce upon the legal rights of the parties, but its findings of fact are conclusive. It is believed that authoritative establishment of the facts of a controversial case, together with the lapse of time necessary thereto, will aid peaceful agreement upon the merits. Going further, the parties may submit a dispute to a commission for recommendations as to settlement (mediation, conciliation); this practise is growing as a result of many treaty agreements. But the nations are not generally willing to submit their disputes for binding decision (arbitration, adjudication) unless these disputes can be settled by accepted law; this restricts the discretion of the judges and gives the participants an opportunity to foresee and argue

the fate of their contentions. Cases may be submitted only by agreement between the parties at the time or in advance of the dispute. International arbitration and adjudication are in reality essentially administrative action and also raise the question of enforcement. Actually international awards are with rare exceptions voluntarily obeyed; although this feature of the situation may change if obligatory submission develops very far. Finally, the future utilization of international adjudication seems clearly to turn not merely upon a desire for pacific settlement and a willingness to lose, if the loss be according to law, but upon development of the law itself and of forms of submission and procedure which shall render international adjudication more dependable and effective (*see* ARBITRATION, INTERNATIONAL; MEDIATION).

International federation follows as a general and synthetic form of international organization. It consists of the union of states for one common purpose or more and varies in membership and purpose from the alliance upward. The union is established by a formal agreement in which the scope and method of federal action are described and any federal agencies set up. Many details concerning the membership and duration of the union, its officers, organs and activities and the revision of its fundamental law must be settled in the original agreement. The treaty or convention establishing the union is in effect an international constitution. Strictly speaking, any union of two states constitutes an interstate federation, although the idea and the term are used chiefly to refer to multipartite unions. What is more significant is the fact that every union of states for the establishment of an international conference, court or commission is in principle a federation. In the creation of conferences and courts such federation is not commonly of long duration and is therefore not of great significance in this connection; on the other hand, administrative bureaus are frequently set up for indefinite periods and the unions of states supporting them provide the most numerous examples of international federation. The federal system seems complete when the union has a recurrent conference acting as constituent assembly or legislature, an interim committee acting as an executive council to supervise the work of the administrative bureau and perhaps even an arbitral board or tribunal to settle disputes in connection with the operations of the bureau. In such administrative unions the scope of action is generally narrow, but from the point

of view of structure and procedure international federation is present in all its essential qualities.

Both the foundations and the phenomena of international organization have varied considerably through the course of history. Certain forms of international organization originated in ancient times. The state system of the ancient world was not conducive to the development of such activity until the rise of the Greek city-state, but in Greece and even in the less favorable circumstances of Asiatic, African and Roman state systems a certain amount of international organization existed. Traces of international law, much diplomacy and treaty negotiation, some international conference and a large amount of international adjudication capped by serious experiments in international federation developed. All these were more or less ended, however, by the establishment of Roman imperial domination.

Certain of these activities—diplomacy, treaty making and international law—persisted into the early Middle Ages. Later arbitration revived somewhat, as did international conference and even a weak sort of interstate federation; for example, in the Hanseatic League. Until the sixteenth century, however, international organization was at low ebb.

The appearance of strong national states in place of the feudal chaos and weak empires of the Middle Ages and the revival of communication led to a reappearance of international organization. The half dozen great powers and their dependencies are surrounded by fifty or sixty more or less independent states; the volume of international trade, travel and intercourse of all sorts has grown tremendously. These developments inevitably stimulated international organization. International law arose and has continued to the present with an ever growing body of scientific literature and of official international treaty legislation and codification. Consular and diplomatic organization and practise have greatly increased; today there exist over twenty-five thousand consular and diplomatic agents. Thousands of treaties have been concluded, more and more frequently and on all sorts of subjects, with a notable increase in the number of multilateral conventions. International conferences in times of peace have become far more frequent, broader in scope and increasingly effective during the course of the past century; today the practise is very common, to some extent because of the use of special conferences instead of a single international assembly of general jurisdiction. Inter-

national administrative agencies, unknown prior to 1800, have multiplied gradually, especially since 1875, while more recent years have seen the creation of the general administrative services of the Pan American Union and the League. Finally, international arbitral tribunals, claims commissions and courts of justice have multiplied and broadened their activity, again since 1875, reaching their climax in the Permanent Court of Arbitration (*q.v.*) set up at The Hague in 1899 and the Permanent Court of International Justice (*q.v.*) established in 1921 under the auspices of the League of Nations. With more or less serious but constantly decreasing interruptions in times of war organized international cooperation has grown at an increasing pace during the past fifty years.

Various experiments in interstate federation were launched during the early modern period from 1500 to 1800 in the form both of alliances and of such national confederations as the Swiss Confederation and the United States of America; these were followed by projects for true international leagues put forward from time to time by Crucé, Kant and others. It was in the attempt to develop the Holy Alliance into a Concert of Europe, however, that contemporary international federation was foreshadowed. The concert led through varying success and failure to the setting up of the League of Nations and its related organizations, the International Labor Organization and the Permanent Court of International Justice. In the meantime the Pan American Union had been developing slowly into a weak rival federation in the western hemisphere.

The League of Nations has grown enormously in membership, structure and activity since its establishment in 1920. Provided with a deliberative if not legislative Assembly, an executive Council and an administrative Secretariat, although without coercive power, the League has also developed a number of auxiliary organizations (Health, Economics and Finance, Transit and Communications, Intellectual Cooperation), each rather pretentious in structure and function. Various commissions and special conferences function in connection with the League on such matters as disarmament, mandates and minority protection. The International Labor Organization is a duplicate league dealing solely with labor questions.

The historic development of international organization in terms of functions is reflected in the record of the development of the organs of

international cooperation. In earlier times conciliation of national policies in international law and diplomacy and treaty agreement was the chief objective, with some application of international law and treaties by arbitration. Not until the nineteenth century were elaboration of international policy in conference and its execution and international service to national needs by international administration established on an extensive scale. Even today the problem of international enforcement, or international sanctions, remains to be solved. In the meantime the other functions continue.

Any estimate of the effectiveness of contemporary international organization, including the League of Nations, turns mainly upon this question of the need for coercion in international organization. An amazing amount of international cooperation has proved obtainable on a purely voluntary basis, while constant discussion and comparison of national policies have led to much voluntary synthesis of them. On the other hand, the nations noticeably resent any verbal suggestion of coercion, although they act constantly under legal compulsion; in the efforts to establish a system of sanctions not the resistance of the potential victims but the reluctance of the prospective enforcers has held up progress. Furthermore cases may always arise in which voluntary compliance is not obtainable; in Manchuria and Nicaragua, for example, where weakness of state authority rather than action by a strong state constitutes the threat to peace and justice, this absence of international police power means that strong national states must be left free to act. In such cases the danger of illegal violence on the part of the intervening nations is always present. This great shortcoming of contemporary international organization and the unwillingness to see it remedied in the only way in which it can be remedied logically and practically lead to dangerous want of confidence and opposition to world order and evoke in one or two cases, such as the United States and Soviet Russia, policies dangerously close to absolute non-participation, non-cooperation, isolation or international anarchism. Such attempts to stay out or to get out of the organized international community prevent the fully effective functioning of that community. Certainly contemporary international organization is both valuable and effective in facilitating, stimulating and inducing voluntary international cooperation and in synthesizing national views and policies to that end; but it cannot be entirely adequate while it is de-

void of organization and procedure for international coercion in case of need. Such organization and such procedure would of course be of no value unless the members of the organization were willing to employ them; on the other hand, they will never be set up until the nations so desire.

PITMAN B. POTTER

*See:* INTERNATIONAL RELATIONS; DIPLOMACY; INTERNATIONAL LAW; INTERNATIONAL LEGISLATION; LEAGUE OF NATIONS; INTERNATIONAL LABOR ORGANIZATION; ARBITRATION, INTERNATIONAL; MEDIATION; PERMANENT COURT OF INTERNATIONAL JUSTICE; PERMANENT COURT OF ARBITRATION; INTERNATIONAL WATERWAYS; INTERNATIONALISM; OUTLAWRY OF WAR; PEACE MOVEMENTS; SANCTION; SOVEREIGNTY; EQUALITY OF STATES; NATIONALISM; ISOLATION, DIPLOMATIC; TREATIES; AGREEMENTS, INTERNATIONAL; FEDERALISM; IMPERIALISM; MANDATES; HANSEATIC LEAGUE; HOLY ALLIANCE; GREAT POWERS; CONCERT OF POWERS; CENTRAL AMERICAN FEDERATION.

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**INTERNATIONAL PAYMENTS, BALANCE OF.** See **BALANCE OF TRADE; INTERNATIONAL FINANCE.**

**INTERNATIONAL RELATIONS** is a title that requires definition. It will be dealt with here as concerning, in the first place, the relationship itself, not the precepts and procedure regulating international relations, which constitute international law; nor the principles and procedures for conducting them, which correspond to diplomacy; nor the happenings consequent on that relationship, which is the course of history; nor even the products of the relationship either in new institutions, such as the League of Nations, the Soviet system and the British Empire, or in new ideas, such as pan-Europeanism, pacifism or pluralism.

In the second place, this article is concerned only with the relationship between nations. The social relationships between community units anterior or inferior to the sovereign nations of modern civilization are of interest here only in so far as they may suggest that these national states are but episodes in the present evolutionary epoch of civilized society. It is in this relationship between nations that the process of social evolution can be most clearly seen as one of periodic pendulum swings between centripetal and centrifugal tendencies. Thus the past two centuries exhibited an accelerating action of centrifugal decentralization, the "national movement," whereas the present century is experiencing an even more rapidly accelerating centripetal activity in the internationalism of capitalist and communist collectivities. These internationalisms although fighting on international and internecine fronts are none the less founding a new social synthesis in the international relationship.

The equations of international relations have true significance only as expressed in terms of the political factors and economic forces of a particular period. Thus at the beginning of the Christian era international relations in the orbit of the western social organism were regulated by the administrative and judicial institutions of

the Roman Empire; the "nations" were communities, each of which had a relation to the Roman rule but little or none to one another. It was in this imperial regulation of the rights of non-citizens that international law had its inception. Its emergence from the *jus gentium* and *jus fetiale* is as significant of the flux and reflux in the organization of civilization as the process by which the League of Nations has emerged from an international relationship reproducing in principle that which existed between the Greek city-states. The Roman Empire represents the most recent epoch in which the pendulum swing reached such an extreme point of centralized control over the external relations between communities that practically there was between them no international relationship at all. Since at the accelerated pace of present day change such an extreme point of centralization in a higher phase of the spiral of progress may at no distant date again be reached, it becomes important to reexamine the general course of international relations.

It is impossible to review here in any detail the process by which the pendulum swung back to decentralization: through the degeneracy of the Roman ruling class and its defeat by younger races; through the division regionally between the Western, or Latin, and the Eastern, or Greek, empires; through the dualism between regime and religion that led to the rivalry of empire and papacy; and through the decline of the diarchy exercised by chivalry and the church. But the political conditions under which the modern European nations were created should be noted because of the form they imposed on the modern European international relationship. This relationship can be very briefly and very broadly characterized as distinctively dynastic during the first phase of the sixteenth, seventeenth and eighteenth centuries and as democratic in the Anglo-Saxon definition of the word during the nineteenth and the first half of the twentieth century. For the modern nations emerged from a welter of warfare that during the fifteenth and sixteenth centuries swept away the internationalism of caste and creed by which chivalry and the church had diluted and prolonged Roman imperialism. The center round which the racial, regional and regimental rebellions of nationalism rallied, the new authority to which they appealed, the new rule on which they relied, were those of the crown. Having conferred on itself a divine right to a separatist sovereignty the crown then cut away above itself

the supremacy of emperor and pope; and having converted a social structure of status into a simplified internal relationship of sovereign and subject it then crushed out below itself the clerical, feudal, provincial, municipal and other organisms that claimed to share its sovereignty. Thus it was natural and indeed necessary that such international relationship as remained should be represented solely through the person of the national sovereign. It was also natural, indeed inevitable, that as the authority of the sovereign was based on armed force, so also the international relationship could be expressed through him only in terms of arms. Thus foreign policy and diplomacy in so far as they were not directly movements or menaces of war could be conducted only in a mentality of war. At best they based peace on a precarious balance of power; at worst they barred all progress by the wastage of warfare.

Even when revolts from the moral reaction and material ruin of the wars of religion or of the colonial and continental wars created the Protestant Reformation or the French Revolution and an effort to reconstruct the international relationship, results were nullified by the rivalries of the ruling dynasties and ruling classes and by their resistance to any redistribution of that responsibility for international relations that they had misused. Thus the "great design" of Henry IV and subsequent similar schemes for a world state, although they represented in form a real international idealism, in fact were little more than diplomatic gambits in the dynastic duels of the day. And one of the latest of these reconstructive revolts after an epoch of warfare, the Holy Alliance, soon convicted itself of being not so much an international peace council as a conspiracy against national progress.

In the first period of this dynastic phase of international relations the commonalty still retained some measure of control over the crown. As late as the sixteenth century monarchs depended on voluntary or voted supplies for the man power and money power for warfare. But this regime was more or less rapidly replaced by one based on professional forces and on a permanent fisc, the use of which parliament was in a position to veto only in certain countries and on certain occasions. By the eighteenth century the conduct of foreign affairs and the control of foreign policy had come to be universally accepted as a prerogative of the crown.

Consequently both the maritime competition for colonial supremacy that resulted from the

opening up of the Asiatic, American, Australasian and African continents to European exploitation and the military competition for continental supremacy in Europe that resulted from the collapse of the authority of church and empire were conducted by sovereigns unrestrained by any supernatural regime or international regulation. The instruments of their struggle were professional soldiers, privateers and profit seeking subjects unrestricted by any realization of or responsibility for a common civilization. Somewhat later chartered companies holding concessions from the crown or corporations of international importance made a transition to the present principle of governmental responsibility. But just as there was little to choose between pioneers and pirates in the early colonial and commercial relationship so there was small room for choice on the continent of Europe itself, where the permanent representatives of the crown at foreign courts were expected by training and tradition to be as cunning as smugglers in tricking the law and as callous as slave traders in trading with the lives of their fellow countrymen and with the liberties of their fellow Christians. Family connections between the competing princes and common feelings between competing peoples were quite ineffective even to mitigate the evils of such a relationship.

Before the end of the nineteenth century the pendulum had started to swing rapidly, back toward a new synthesis of society in respect to the international relationship. For a new civilization based on science was by then establishing itself swiftly throughout the European and American continents and as swiftly extending itself into the international relationship. One of the earliest and most evident economic expressions of this new scientific synthesis was the so-called industrial revolution, while its most prominent political beginnings were the British, American and French revolutions, which established the representative principle of government. And although the control and conduct of international relations remained for nearly a century thereafter a reserve of the ruling king or class, this became more and more a reserve remote from the real international relationship between peoples.

This reintegration of society proceeded from the bottom upward. It began by connecting up the international relations between individual nationals two centuries ago and has ever since been coordinating the international relations of national institutions. It has, for example, ef-

fectively organized international correspondence in telegraphic and postal unions under international regulation and rates. It has provided international security for the persons of individuals by contract and cooperation and for their property by a corpus of so-called private international law that is now better established than the public international law which concerns the relations between states. Thence it is passing from the individual to the institutional region of foreign relations by initiating a policing of civilized society. Inhumane exploitations of subject peoples for profit, such as the slave trade or the arms and drug traffic, and the extermination of valuable animals, as in the fur seal or osprey feather trades, have been regulated by international compact, while extradition has ended the exploitation of frontiers by crime.

By the end of the industrial revolution a century ago an international renaissance had been brought about by such agencies as travel, trade and translation, which had so broken down or bridged over the barriers of national frontiers and fashions that the individual citizens of western civilization were beginning normally to think of one another as akin in certain matters. Europe and America had come to eat, live and learn, to drudge and dream, to reason and be ruled, all on much the same lines and within much the same limits.

Unfortunately these emerging attitudes could be given no solid foundation either in Christian society or in scientific solidarity, as Christianity had gone too far from its original simplicity and sodality into ecclesiasticism and Erastianism, while science has not as yet left its laboratory attic for the arena of life. In economics the new international impetus has made even less progress than in ethics. Mechanism in production and mercantilism in commerce had set up competing and compacted national economic entities. Protection by tariffs, treaties and territorial imperialism became as favored a form of security as armies or alliances. Moreover this system with its support of private interests by public institutions made the interests both dependent on and dominant over the institutions. Thus commercialism like capitalism and clericalism became nationalized to the detriment of its own development and that of civilization. The wars of the nineteenth century were all more or less caused by commercial competition, while tariff walls and trade wars were and still are obstacles to the establishment of an international economic system,

Political union in any form can be effective only as the expression of an economic unification. For this reason the new internationalist ideals have as yet had little effect in the political realm against the national idols of sovereignty, security and self-complacency. A regulation of the reciprocal requirements of different regions in materials, markets and manufactures would by now have reorganized civilization and removed national rivalry but for conservative maintenance of national competition in the name of security. The competition for prestige and territory between the crowned rulers of the eighteenth century was less of a brake on progress than is the competition for production and trade between the ruling classes of the twentieth. In the eighteenth century there was as yet very little international relationship to represent; in the twentieth there is such a relationship both ethical and economic, but its political representation and realization are irreconcilable with the religion of private property and personal profit.

Accelerated reaction toward internationalism resulted from the World War—a reaction ethical in its realization of the evils of warfare and war fever and economic in respect of the material extremity to which the world was reduced by war wastage. The complete consequences of this incipient revolution in the international relationship cannot be dealt with here in detail. They represent a variety of different—and in some cases divergent—lines of advance and it would be hard to say which of these at present offers the best prospect of progress. Whether progress will come by a general reduction of armaments or by the construction of a supernational power and police in the political region or as a confederation of corporative states for reorganizing production and consumption in the economic region; whether it will be reached by the road of diplomatic negotiation or by that of democratic representation, are questions impossible to answer.

But one development must be dealt with, as it has for a century been inherent in the international relationship and seems likely to become imperative. That is the development in the field of capital and labor, the present tendency of property owners and proletariat alike to concentrate into two hostile camps irrespective of national feelings and frontiers. Labor, man power, as the greatest sufferer by the industrial revolution was the first to organize its wage slaves against the owners of wealth. But the money power now through its command of publicity, of

parliaments and of the other instruments of power has formed a fighting front which although less conspicuous has a far greater control of the international relationship. Moreover, whereas money power bases its activities on the national organism and is evolutionary, man power has an international objective and is revolutionary. The international ideologies of socialism and syndicalism, ethical in their propaganda and economic in their procedure, are so revolutionary in principle that they have as yet not succeeded in getting real power by peaceful means. On the other hand, money power exercised by the owners of wealth is so associated with the existing order and with national governmental authority that it has been unable hitherto to give effective expression to its real international interests.

But man power as such has now become effectively organized in communism. Thus there emerges a civilization in which man power and money power are no longer incorporated, as they were in the mediaeval guild, or merely competing for profit, as they were in the national craft union, or even in social conflict within the national state. Civilization is coming to be divided not only into economically conflicting class camps but also into ethically, economically and ethnically competitive continents: Asia and possibly Africa under the communist creed and constitution on the one side and on the other Europe and America under the capitalist creed and confederations. And very significantly both of these systems show a recent and remarkable expansion of the economic entity to the total or partial elimination of national sovereignty and separatism. The communist system was based originally on a concession of constitutional and cultural self-determination to constituent nations but severely subjected to central control of capital and commerce, production and consumption. This system is now well advanced into the second stage toward a new economic entity, that of building up underneath its complex political confederation a unified economic state structure. In the external international relationship the Soviet system is both economically and politically an organic whole and evidently it will eventually be so also in the internal relationships of its component nations. On the other hand, the capitalist system is still feebly feeling its way toward an internal control of private property and profit which will empower each national government to promote and participate in such international controls of capital, currency and commerce as

have become urgently necessary if the whole basis of private capitalism and national competition is not to break up. And although the League Council with its diplomatic and non-democratic constitution has been as yet little more successful than would have been its predecessor, the concert of Europe, and although such economic experiments as the Genoa or Hague conferences became less a cooperation of governments than a competition of big businesses, yet Europe and America are being speedily driven by economic pressure into economic solidarity.

The international relationship of the future seems therefore to be that of a fighting front between a progressive centrally controlled "corporate" state of communist Eurasia and a conservative confederation of more or less corporate commonwealths and countries. The relationship between the nations composing this capitalist confederation may in time become as peaceable as that at present established between the nations within the British Commonwealth or within the Bolshevik commonalty. But who can say whether war will then disappear or will only once again be concentrated into outbreaks—at longer intervals, of greater intensiveness and wider extension—in which civilization will itself be re-fused and reformed into a "Parliament of Man, a Federation of the World"?

GEORGE YOUNG

*See:* INTERNATIONAL ORGANIZATION, INTERNATIONAL LAW; DIPLOMACY, CONSULAR SERVICE; LEAGUE OF NATIONS, NATIONALISM; CHAUVINISM; WAR; INSPECTION; IMPERIAL UNITY; FEDERATION, INTERNATIONALISM; PEACE MOVEMENTS, DISARMAMENT, ARBITRATION, INTERNATIONAL; MEDIATION; GUARANTEES, INTERNATIONAL; TREATIES; AGREEMENTS, INTERNATIONAL; ALLIANCE, ISOLATION, DIPLOMATIC; ECONOMIC POLICY; FOREIGN INVESTMENT; INTERNATIONAL TRADE; LOANS, INTERGOVERNMENTAL.

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INTERNATIONAL, SOCIALIST. See SOCIALISM; LABOR MOVEMENT.

## INTERNATIONAL TRADE

INSTITUTIONAL FRAMEWORK. *History and Description.* International trade, or trade between the members of different political units, is the oldest form of commodity exchange. Primitive communities were so organized that trade was conceivable only between members of different tribes; and when the intracommunal exchange of goods developed, even where it did not grow out of intertribal trade it was patterned on the lines of the latter. A similar relation between international and domestic trade obtained at the beginning of the modern era; capitalistic wholesale trading was organized on an international scale before the domestic market expanded sufficiently to afford the requisite opportunity for men of large capital thoroughly imbued with the spirit of business.

It was only when domestic trade became as capitalistic as foreign commerce that writers were struck by the essential similarity of the two and the question was raised as to the fundamental criterion of difference. This was found at the time primarily in the fact that productive forces—labor, capital and entrepreneurial ability, not to speak of natural resources—do not move as readily across national frontiers as within the borders of a country. On the background of differences in the stage of economic development and in the structure of national economic systems, which are traceable in the last resort to differences in the course of history and in the national traditions deriving from it, the lower mobility of factors of production provides a more or less permanent basis for the exchange of commodities between different countries. The peculiarities of international trade, however, are not wholly explained there-



by; these are due to the existence of cultural and linguistic barriers, of differences in political structures and legal systems, of different commercial, monetary and financial policies.

For a long time the discussion of international trade was limited to the subject of commodity exchange and with good reason. The interchange of services and capital funds, the so-called invisible imports and exports, always formed a tiny stream alongside the mighty flow of goods; but it was relatively insignificant and could be disregarded. Since the end of the eighteenth century, however, it has come to acquire increasing importance despite the tremendous expansion of the volume of international commodity exchanges. At present there is no longer any justification for limiting the term international trade to the exchange of goods. It is now more nearly coextensive with the entire complex of international economic relations, with the movement across national boundaries of tangible goods, services, capital funds and even of population.

The end of the eighteenth century is generally associated with the beginning of the process of industrialization which originating in England has gradually transformed other countries. The importance of industrialization for international trade cannot be overestimated. Yet it must not be overlooked that the end of the eighteenth century marks also a turning point in the political history of the western world; at that time there were set in motion political forces whose action offers valuable clues to the understanding of the course of international trade. The establishment of an independent union of North American states and scarcely a generation later the emancipation of South American states signaled the downfall of the old colonial system. The unification of Italy and the creation of the German Empire signified an important victory for the principle of the national state and permitted the economic integration of large areas. The era of imperialism was inaugurated in the 1890's with the expansion of European nations to other continents through the acquisition of colonies and the annexation of distant territories. The organization of new states following the World War led of necessity to an expansion in the range of international trading, and the rising tide of nationalism in the east—in the Balkans, Egypt, India and China—brought in its wake a greater demand for foreign capital and signified a further extension of international economic relations.

The change in character and volume of international trade since the end of the eighteenth century was due to the interaction of a number of factors. First among them is the growth of population out of proportion to the increase in the domestic food supply. To provide sustenance for the surplus population industrialization became imperative; another means of relief was emigration to unexploited territories in the New World. Vast masses of people were thus set in motion first in England, then in Germany, later in Italy, the Balkans and Poland; Japan and China have also contributed their share. The stream of emigrants flowed into the United States, the countries of Latin America and to a smaller extent into other areas, where the material conditions of existence were less favorable; thus virgin territories were settled and new civilizations created. Almost from the beginning the young countries exercised a demand for a variety of goods which could not be produced there, a demand which increased with the growth of population and the rise in its standard of living and acted as one of the principal stimuli for the further expansion of international trade.

Another important factor has been the development of industrialism impelled by technological invention. Since unit costs have been found to decline with an increase in scale of operations, the competitive pressure for lower cost led eventually to an expansion of manufacture beyond the capacity of the domestic market and a dependence upon foreign outlets for the surplus output. At first English textile manufacturers, later German ironmasters and in the course of time an increasing number of industries in various countries—chemical, electrical manufacturing, machine construction, automobile—found it essential to export a growing share of their output in order to maintain the scale of production. At present there is scarcely a major industry anywhere which is not dependent upon the world market for its sales. Specialization, one of the principal sources of the strength of modern industry, has encouraged this development: since the demand of any single country for a highly specialized product is rapidly met, the plant manufacturing it is capable of maintaining production at an undiminished pace long after the home market has reached the point of saturation. The reports of the experts presented to the International Economic Conference held in Geneva in 1927 show that the highly industrialized countries are the most dependent

upon the world market and that rationalization is likely further to accentuate this dependence.

Industrialization was preceded and accompanied by capital export, which became really important only in the second half of the nineteenth century. Individual capitalists and banks may have invested their capital abroad merely because they were attracted by high interest rates; but from a social point of view the significance of capital export lies in the establishment in the younger countries of new branches of production—the cultivation of cotton and tobacco, certain types of mining—or in the further development of already existing production, such as wheat growing. Foreign capital, which flowed into the countries on the American continent, into European colonies in Asia, Africa and Australia and which was of assistance in Germany, Russia and elsewhere in eastern Europe, accelerated the economic development of the debtor nations and enabled them to participate in the international exchange of raw materials and manufactured products.

International trade on a large scale was also connected with the development of transportation facilities. The construction of railways with a consequent large reduction in the cost of freight transport was an essential condition of long distance mass traffic and enabled the development of production in regions which had no direct access to navigable waters. Railroads brought the interior of Europe nearer the ocean and linked the American far west to international commercial routes. A few trunk lines also crossed other continents and brought them within the orbit of the world market. Railroads, which represent a total investment of about \$100,000,000,000 and which at least in the younger countries could not have been built without the aid of foreign capital, thus opened new opportunities for its investment also in agriculture, mining and manufacturing. The utilization of steam power in ocean shipping likewise facilitated international exchanges. Freight charges were so reduced that even bulky goods of low value—Australian wool, Indian jute, ore from Sweden and Spain—could be shipped to distant manufacturing centers.

The movement of population so important during the second half of the nineteenth century has in recent years diminished as a result of immigration restrictions in many countries. On the other hand, the international migration of capital has gained in importance and will probably loom even larger in the future. The early

tempestuous development of transportation facilities was succeeded by a period of moderate expansion; in this field Asia and Africa still offer vast opportunities. The principal effect of the interaction of these forces has been an enormous increase in demand for goods in all types of countries—old and young, “civilized” and “backward”—which in its turn has caused an expansion and intensification of international economic relations. At the same time there occurred a fundamental transformation in the character of international commodity exchanges as the economic systems of the various countries were reorganized and their consumption needs and production requirements radically modified. In this connection three types of international exchanges may be distinguished: between tropical and temperate countries, between agrarian and industrial countries and between industrial countries.

The exchange of tropical products for those of the temperate zone, the earliest variety of international trade, still retains some importance: coffee, rubber, cane sugar, tobacco, rice, spices and tropical fruits play a large role in international trade. The methods of production have of course changed fundamentally: the primitive agriculture of the natives has given way to the modern capitalistic plantation managed by Europeans or Americans. Yet the cultivation of tropical plants, the success of which is bound up with peculiar conditions of climate and soil, is in many cases almost as localized as it was a century ago, while an increasing number of countries have become dependent upon tropical products. Consequently tropical areas have been drawn more and more into the orbit of international exchanges; in fact the products of some tropical regions have entered the world market rather recently and only as a result of an increased demand for plantation wares.

The changes in the trade between agrarian and raw material countries on the one hand and industrial countries on the other are of greater significance. For the past hundred years food-stuffs have constituted an ever larger portion of the total volume of international trade. Industrial countries with a limited arable area, in which agriculture was developed far beyond the point of diminishing returns, have become dependent upon the importation of grain from abroad—from the United States, Canada and Argentina in the western hemisphere and from Russia and the Balkans in Europe. Similarly the domestic production of meat, animal fats and

dairy products in the industrial countries proved insufficient for the growing and prospering urban population; therefore cattle from South America and Australia and dairy products from Denmark and Holland became important items of import. International trade in industrial raw materials has grown even more; its rapid expansion was due to improvements in industrial technique which have led to the substitution of minerals of localized distribution, such as iron, copper, petroleum and potash, for organic substances and to the increased reliance upon certain organic raw materials, such as cotton, silk and jute, which can be grown only under climatic conditions of limited occurrence. Countries exporting foodstuffs and raw materials obtain industrial products in exchange; as a rule they are debtor countries exporting more than they import and using the surplus to pay interest and amortization charges on foreign capital invested in their railroads, public improvements, banks, plantations and the like.

Trade among industrial countries, the volume of which is much greater than is commonly believed, is the direct outgrowth of industrialism. European industrial nations do more trading among themselves than with agrarian countries. Germany, for example, sends three fourths of its industrial exports to European industrial countries, which provide a market also for three fifths of American industrial exports; similarly Great Britain sells a major portion of its exported merchandise in industrial countries. France trades silk and perfumes for machines and electrical appliances; England yarns, fine fabrics and agricultural machinery for coarser fabrics, chemicals and musical instruments; and the United States automobiles, agricultural and industrial machinery for silk and paper goods. Such interindustrial trading is traceable to specialization based on differences in natural resources, technical equipment and industrial tradition and is indicative of a marked degree of interdependence among industrial nations. It is to be observed that a large share of the output of highly industrial countries consists of producers' goods, such as machines, electrical appliances, chemical and metal products adapted to industrial and urban needs rather than to those of agrarian and raw material countries. The production of consumers' manufactures, among which textiles used to bulk very large in international trade, has now become more decentralized, each country relying more upon its domestic plants and less upon imports.

The type of commodities entering world trade determines the routes which it follows. Since the principal commercial countries of Europe and the industrial regions of North America as well as great sections of South America border on the Atlantic Ocean the transatlantic trade has been very important since the beginning of the modern era; at present its share of the total ocean freight movement is estimated at 70 percent. The transpacific trade is small in comparison, because the west coast of the Americas has not yet reached as high a state of industrial development as the east and the trade of the Asiatic Far East is still carried on mainly by way of the Indian Ocean. The importance of the Pacific as a trade route has risen, however, since the opening of the Panama Canal, which brought the Far East and the west coast of the Americas closer to the industrial areas on both sides of the Atlantic. Moreover transpacific traffic may be expected to grow with the more rapid economic development of the Far East. Similarly the Pan-American traffic is definitely on the increase, the oceanic trade between the two continents having profited greatly by the building of the Panama Canal. Euro-Asiatic trade, which is as old as European civilization, benefited by the opening of the Suez Canal and remains of some importance. The Indian Ocean is still the great trade route linking the British, Dutch and French East Indies to Europe; yet India's share of world trade was only 3.5 percent in 1900 and 5 percent in 1930.

In close connection with international commodity movements are the international movements of capital in the form of short term loan funds and long term investment funds. The flow of a considerable part of short term funds, that which represents immediate or deferred payments for commodity imports, parallels the movement of commodities but proceeds in the opposite direction. The movements of long term capital, an increasingly important aspect of international economic relations, are even more significantly if less directly related to international traffic in commodities. Capital exported from older and richer countries to younger countries and colonial areas opens new regions for capitalistic development and creates the conditions for the establishment of international commercial relations; indeed trade follows capital more than it does the flag. Whether as direct or as indirect investment such capital makes possible the capitalistic exploitation, more efficient and rational than the primitive destructive form,

of the natural resources of the younger countries and assures a continuous supply of indispensable raw materials and foodstuffs for the industries and population of the older countries. Foreign capital is also indispensable in the development of transportation facilities which link the distant areas of the younger countries to the central home markets and through them to world markets; the engineering trades of the capital exporting countries benefit directly from such railroad and ship construction. The establishment in younger countries of processing and fabrication plants—meat packing, milling, textile manufacturing—is often dependent upon foreign capital. Many of these industries furnish a desirable supplement to the production of creditor countries, while others tend to compete with the home industries of these countries; thus Indian cotton manufacture competes with that of Lancashire. The international movement of capital, whether to finance trade and industry or for purposes of speculation and government finance, sets in motion a return flow of interest payments. The capital importing countries are compelled to develop an export surplus of commodities, while the creditor countries unless they continue to export capital in excess of return payments of interest and amortization instalments must acquire a passive trade balance.

In addition to goods and capital funds nations also interchange services, of which the oldest is the commercial agency or brokerage service. Greeks, Armenians and Chinese, prominent in this field in the early history of international trade, still play an important part in certain quarters of the world; for the most part, however, modern foreign agents and brokers are English and German. Not infrequently the enterprises serving as intermediaries in international trade cluster about certain markets to which goods are shipped from all parts of the world and from which they are distributed to consumption centers. In England and in the Netherlands profits derived from the existence of such intermediary markets are fairly important in the international balance of payments.

Shipping is another such international service. The shipping companies of certain countries, better equipped, with good connections throughout the world and with the assurance of paying return cargoes, may undertake the transportation of freight for other countries. Before the World War English and German shipping lines were in this favorable position with re-

spect to most other countries, including the United States. Transit rail traffic in some European countries is sometimes similarly exploited to bolster the debit side of the balance of payments.

An international service next in importance to shipping is the short term financing of foreign purchases or sales. Such financing is often done directly or through subsidiaries by the banks of the older of the two trading countries. But it is not unusual for the banking institution of a third country, fortified by sound knowledge of conditions in the two trading countries and by ready access to international money markets, to undertake this type of business. Other services auxiliary to international trade, such as insurance of merchandise in transit, are as often as not in the hands of nationals of a third country which for historical reasons came to occupy an established position in this field.

Tendencies which have recently become manifest in the field of international services may foreshadow a future decline in the volume of international trade. The position of the intermediary country or market is being undermined by direct purchases in the producing country; Egyptian cotton, for example, is now purchased in Egypt instead of at auctions in England. The same result is achieved by international agreements which effect a direct exchange of the commodities of one country for those of the other—a variety of barter subject to the usual difficulties of determining a mutually satisfactory ratio of exchange. Direct purchase and international barter are exemplified to a degree in the Soviet monopoly of foreign trade which determines the quantity of imports and exports and tends to buy and sell in the primary markets. A similar decline in international trade services results from the development of national merchant marines and the establishment of branch plants on foreign territory.

Whatever the future of international trade may be, its volume has grown in the past despite the presence of numerous obstructing factors, as may be seen from the accompanying table. The number of participating countries has gradually increased until international exchanges have come directly or indirectly to comprise the entire world. The quantity and variety of goods entering world trade have experienced a parallel growth. Luxury articles no longer form a major portion of the volume; nor is it merely a question of selling abroad the surplus output. The principal driving force of international ex-

changes is found at present in the demand of advanced industrial countries for imported foodstuffs and raw materials; in other words, modern international trade affects the fundamental components of a nation's economic system. Thus in 1929 of the total volume of international trade 23 percent represented foodstuffs and 33 percent industrial raw materials as compared with 37 percent as the share of finished goods and 7 percent as that of services. Indeed the vitality of the most advanced and from a world point of view most important national economies is nowadays essentially dependent upon the continuation of normal economic intercourse with other nations.

WORLD VOLUME OF INTERNATIONAL TRADE AND THE SHARE OF PRINCIPAL COUNTRIES, 1840-1929

YEAR	TOTAL IMPORTS AND EXPORTS (IN BILLIONS OF DOLLARS)	PERCENTAGE SHARE OF			
		UNITED KINGDOM	UNITED STATES	GERMANY	FRANCE
1840	2.8	32	8		10
1860	7.2	25	9		11
1880	14.8	23	10	9	11
1900	20.1	21	11	12	8
1913	40.4	17	15	12	7
1929	66.7	14	14	10	6

Source: Figures for total volume for 1840-1913 from United States, Bureau of Foreign and Domestic Commerce, *Statistical Abstract of the United States, 1921 (1922)* p. 923. The trade figures used in deriving the percentages for 1840-1913 are taken from France, *Statistique Générale, Annuaire statistique, 1924 (Paris 1925)* p. 339\*-12\*, and for the United States from the *Statistical Abstract for the United States, 1928 (1928)* p. 447 and 450. The figures for 1929 are derived from United States, Bureau of Foreign and Domestic Commerce, *Commerce Yearbook 1931, (1931)* vol. II, p. 726-27.

**Public and Private Regulation.** Ever since it has come into prominence international trade has been considerably affected by the intervention of governments. At the beginning of the modern era mercantilist governments, resolved to augment national power by making the balance of trade as favorable as possible, gave most of their attention to the regulation of foreign trade and of domestic production connected with it; since that time foreign trade policy has remained an important element in the economic programs of governments. Direct regulation—through protective or liberal tariffs, commercial treaties and most-favored-nation agreements, reciprocity arrangements and import quotas—has always been a vital issue in public discussions. On these points various economic interest groups make themselves loudly heard and violent conflicts of interests arise, while

the interest of the national economy as a whole is not always carefully weighed in the balance. Protection of course is desired much more often than is free trade. Farmers and industrialists fearing foreign competition demand protection for their products and as a rule command sufficient influence with the government to obtain a fair degree of satisfaction. In agrarian countries, however, agricultural producers, who export most of their output and use a great many imported manufactures, insist on free trade. Similarly, merchants, especially in the seacoast cities, and shipping interests advocate free trade, as do those industrialists who are dependent upon export. Consumers also demand that commodities be offered for sale at low prices. Workers as consumers are largely in favor of free trade, but as producers they may be easily influenced by the fear of cheap foreign competition and led to demand industrial protection. Less attention is usually paid to regulation by administrative measures, a form of regulation which governments have developed in the course of time as a supplement to or even as a substitute for regulation by legislation and treaty. Like tariffs, administrative regulation may be free trade or protectionist in spirit and operates effectively and unobtrusively.

Among administrative measures those relating to currency are perhaps of most far reaching importance. Unstable currency means continual price fluctuations, which obstruct domestic and to a much larger extent foreign trade. The gold standard, adopted first in England and later in other countries, provided one of the essential prerequisites for the normal development of foreign trade. More recently central bank policy, which even under the gold standard is a most important instrumentality of currency regulation, has come to be guided to a certain extent by its anticipated influence upon the foreign trade of the country. A deflationist bank policy leads to internal stagnation; but a policy of inflation although it temporarily stimulates exports and discourages imports—a result which may be deliberately attempted, as in the case of England in 1931—injures in the long run both the country resorting to it and other countries maintaining close economic relations with it. Equally undesirable is the regulation of foreign exchanges sometimes attempted as a measure of administrative protectionism; for example, the foreign exchange restrictions employed in a number of European and South American countries in 1931 and 1932

amounted to a most drastic regulation of foreign trade designed to reduce imports to the absolute minimum.

The capital policy of the government is often related to its currency program; thus the maintenance of a stable currency standard is essential to protect the equity of the foreign capitalist in his investment. In addition specific protective measures are ordinarily taken by younger countries: the legal status of the foreigner and the negotiability of his securities are assured, and the interest on his investment is guaranteed even in private enterprises such as railroads. The general taxation policy as well as the promises given with regard to specific loans are also relevant. The governments of capital exporting countries are ordinarily less concerned with international capital movements. Yet even before the World War it was quite customary to discriminate in favor of colonies and certain countries of close political affiliations. Since the war measures of a restrictive character have come to the fore: complete embargoes on foreign loans have been imposed, investment bankers have been advised against loans to certain countries, and central banks have been forbidden to make loans on certain foreign securities.

In the field of transportation administrative regulation of foreign trade employs such devices as shipping and mail subsidies and numerous other forms of grants intended to encourage the development of regular freight shipping at low rates. Important seaports and canals as well as a great many railroad trunk lines have been built with government aid, and if necessary governments have assisted also in their operation. Not infrequently the public authority arranges railroad rates in such a way as to encourage the movement in and out of the country of certain important commodities, such as coal, grain, cotton and wool. Freight rate differentials are likewise used to impede imports and exports or to facilitate the movement toward certain seaports with a view to affecting specific world markets. Manipulation of rates is, however, a rather complicated procedure and often defeats its own purpose.

Under administrative action with regard to foreign trade must be included also: the work of the consular service, which protects, advises and aids national trade in foreign countries; the services of governmental agencies, particularly well developed in the United States and England, which supply information about export

possibilities and in general about business conditions in foreign countries; and the activities of national chambers of commerce in foreign countries, which often collaborate with government agencies in gathering and distributing information. Mention should also be made of the discontinuous but more or less periodically recurring activities, such as government assistance in the organization of international fairs and government action to promote international standardization of trademarks and merchandise nomenclature.

It will be observed that administrative regulation even where it is intended to encourage the development of foreign trade tends to give the trade and traders of one country preferred standing over those of other countries in foreign markets. Where administrative action aims at a reduction of imports it explicitly assumes a protectionist tinge. Such discrimination and protectionism, which have become rather common of late, escape to a large extent the regulative and mitigating influence of international agreements and go far toward nullifying even most-favored-nation arrangements. From a national point of view administrative regulation is therefore much more elastic and adaptable to current needs than regulation provided by legislation or treaty.

Government regulation interacts with regulation attempted by combinations of private interests for their own benefit. The cooperation of private interests, whether intended to facilitate penetration into foreign markets or to resist foreign competition, must of course operate within the framework of government regulation; but where it becomes really important private regulation may call forth a sympathetic or antagonistic modification of government policy. The government is more likely to be favorable if the benefits of such regulation are widely diffused; indeed where the combination of a large number of producers is essential, government assistance becomes well nigh indispensable.

The mildest form of private regulation is the allowance of export rebates on manufactured goods, when the prices of raw materials entering into production are raised by import duties or cartel agreements. Through such rebates prices of the manufactured goods are restored to their free trade level as far as export is concerned; the objections of exporters to protective duties and price fixing are eliminated thereby, and the sale of raw materials to export industries is left unimpaired. Export rebates may easily

lead to dumping, i.e. selling in foreign markets at prices below average production costs. Dumping has become important with the rise of industrial protectionism and the development of monopolistic combinations and has called forth protective measures in the form of antidumping duties. A substitute or a disguise for export rebates is sometimes found in the activities of national export cartels or export associations which aim at joint action on the part of national producers in foreign markets and the suppression of competition between them.

National export associations or cartels may develop into international agreements or cartels which are designed to eliminate competition in outside markets among their participants. Such international combinations attract attention out of proportion to their intrinsic economic importance because of the close connection with international politics. Before the war international cartels functioned in certain branches of the iron and steel industry and in the production of artificial dyes. After the war some of the old combinations were restored and many new ones organized, notably in copper, electrical equipment and international communications. In the field of shipping, agreements between American and German or American and British interests concerning the allocation of lines or freight and passenger rates have by now become traditional. An important prerequisite for the successful operation of international agreements is the existence of strong national cartels or the domination of the domestic industry by a few very large concerns; even so it has proved rather difficult to reconcile conflicting national interests and to maintain international cartels through periods of depression.

For certain commodities monopolistic combinations influencing international trade take the form of producers' pools which attempt to regulate supply: in the case of agricultural commodities pools are often aided by the government. A control of supply similar to the pool is sometimes undertaken by a very large privately owned concern which on account of its size and international connections has risen to a position of dominance. Attempts at control by such devices have been made repeatedly for wheat as well as for oil, rubber, bananas and matches. The success of such organizations hinges upon the command of enormous capital and ability to forestall the growth of competition from unexpected sources; as either of these conditions is very difficult to realize, attempts of

this sort have heretofore involved considerable risk of failure.

The experience of somewhat similar schemes of price regulation through valorization has proved equally hazardous. Valorization is a plan to maintain the world price at a predetermined level by regulating the flow of commodity to the world markets; it may involve the accumulation of large stocks which can be disposed of only very gradually. The best known instances of valorization—Brazilian coffee and Chilean nitrates—were carried on with direct economic and political support of the government. Nevertheless, the success of such schemes was found to depend upon favorable market conditions. Even after prices are stabilized there is present the danger of an expansion in production induced by the achievement of a profitable price; if this risk cannot be met successfully, valorization inevitably fails.

*National Economic Systems and the World Economy.* The importance of international trade for any one nation varies with the economic structure of the country and the magnitude of its productive resources relative to the population which must be maintained. Apart from an economically self-sufficient country, somewhat like Fichte's "closed state," it is possible to conceive several limiting cases in a country's relation to the outside world: the purely agrarian country producing only agricultural and mineral commodities and importing manufactures, the purely industrial country completely dependent upon the outside for foodstuffs and mineral raw materials, the trading and capital exporting nation whose entire stock of consumption goods is imported in payment for international services rendered by the country's merchants and for capital invested abroad. Of course no one country exemplifies perfectly any of these types, but countries do approximate one or the other of them. The importance for a country of economic relations with the outside world is reflected most clearly in its dependence upon imports: the larger the imports relative to the domestic supply and the more essential they are to sustain the smooth functioning of the economic machine, the greater the economic significance of international trade for the country.

The importance of merchandise movement in and out of the country is generally measured by the import-export per capita figure. On this basis it is found that foreign trade is more important for smaller nations and industrial countries than for larger and non-industrial countries.

Thus in 1929 the per capita foreign trade turnover in dollars was as follows:

Denmark	266
Netherlands	243
Switzerland	228
Great Britain	219
France	193
Germany	100
United States	79
Japan	32
British India	6.5
Russia	5.7

The enormous preponderance of foreign trade in smaller countries is due to the importance of transit trade and to a greater dependence on foreign supplies because of small natural and man power resources. Industrial countries too are densely settled and contain a population maintaining a high standard of living. A better measure than per capita figures is the ratio of exports or imports to domestic production. Unfortunately total production figures are not available for many countries, and even for the most advanced countries they form a discontinuous and short series. It is estimated that Great Britain exports one fourth of its output and Germany one fifth; the industries and labor of both countries are thus in a very real sense dependent upon foreign markets. Other countries export a much smaller proportion, but with the expansion in their industries and the growth of their population a higher ratio of exports to output may be expected as a matter of course.

To industrial countries an expansion of the market through exportation, which means lower production costs because of a larger scale of operations and the possibility of greater specialization, offers the opportunity of a better utilization of industrial resources and of employment for surplus labor. In fact the Malthusian law of population is rendered ineffective for industrial countries through such enlargement and specialization of their industries, which assure the importation of foodstuffs from less developed areas. It is no accident that in recent years emigration from industrial countries has been smaller than from agrarian countries: the limits upon the productive capacity of the former are much more elastic than for the latter. Industrial countries also profit by the intensification of competition which accompanies expansion of the market. Technological and business inventions originating in one country are transmitted through these channels, and the domestic industries are forced to keep as efficient

as possible. National peculiarities are not necessarily eliminated thereby; on the contrary, they may often be turned to advantage in international competition. Attempts are made of course to eliminate troublesome competition, and the line between invigorating and destructive rivalry is not always properly drawn. Industrial countries are usually also creditor and trading nations. Their national incomes are increased by returns obtained from foreign investments, which are generally greater than would have been earned by investment at home, and by payments for services rendered in international trade.

The benefits derived from international trade by agrarian and raw material countries are the obverse of those enjoyed by industrial countries. The latter not only transmit to the former their industrial arts and their business methods but also supply man power and entrepreneurial ability. Similarly, foreign capital in the younger countries makes possible the exploitation of resources and the development of productive forces which would otherwise have lain dormant. The increased output finds a market in the older countries, which means also that the new countries become vitally dependent upon export, much concerned with the steadiness of the foreign outlets and extremely sensitive to international price changes; this applies with particular force to those countries whose exports consist virtually of one commodity. Nevertheless, the younger countries develop and grow into strong economic entities through their connection with the world market. The standard of living of their population is raised—modern dwellings, finer clothing and the like are demanded—and it becomes possible to accommodate a larger population. Some of the younger countries endowed with certain raw materials and a suitable population may imitate the older countries and attempt to become independent, at least in trades closely connected with agriculture and mining. The United States passed through this stage of economic emancipation in the first half of the nineteenth century and the examples of India, Egypt and the Balkans at present point to such a trend. Many readjustments become necessary in consequence: exports of such countries are reduced and they may be threatened even with a complete loss of their customary markets. The network of international economic relations, however, is not destroyed thereby: as countries become industrialized their inhabitants develop new needs, for the



satisfaction of some of which they must look to other countries.

The influence of international trade extends beyond the individual national economies. As the relations between them grow in scope and importance, there gradually develops an international economic system, with its own markets and auxiliary institutions, which in a certain sense functions apart from and in contrast to national economic units.

The world market is a congeries of supply and demand relations centering about certain commodities and entered into in varying degrees by all countries. As contrasted with national markets, which are influenced by policies of national governments, the world market is free from any restrictions of a non-economic character. World prices therefore reflect the underlying balance of economic forces much more accurately than do national prices. They register the influence of the entire supply of a commodity, including stocks and reserves, regardless of its spatial distribution. For this reason the world price may be lower than is desired by interests operating in national markets, as is attested by the history of grain, sugar, coffee, rubber and oil. It may even fall below the cost of production. In such a case no makeshift measures would help; the only remedy is a reduction of output which is slow and difficult because of the threatened loss of invested capital and which may be offset by the increase of output in another country. That does not imply that world prices may not be manipulated for short periods; more permanent artificial price fixing, however, as attempted through valorization schemes, by pools, international cartels and world wide combinations, fails in the long run.

Another important difference between world and national markets concerns the number and types of commodities which reach the world market. A great many commodities are not traded internationally because the cost of their transportation over long distances is too high as compared with their value, for example, building materials; or because they are adapted to specific demands of one region or country, as is true of most finished goods. The world market is naturally limited to those commodities for which either the demand or the supply is of an international character and which are produced in large quantities, mainly raw materials and food staples. Those which are capable of exact grading are dealt in through commodity exchanges; others, whose quality must be ascer-

tained by the buyer on the spot, are bought and sold at auctions. The location of such exchanges and auctions is determined by proximity to production areas and consumption centers; but once established they cannot easily be moved, because their effective functioning comes to depend upon a complicated network of wholesalers' and brokers' offices, financial institutions, transportation and communication connections and warehousing facilities.

World prices are in a sense not comparable with national prices. There is no world price level because there is no world currency whose purchasing power it would express. Moreover the world trade volume is but a part of national trade volumes; national price levels are affected by the prices of a number of goods which do not enter international exchanges—hence the permanent disparity between the purchasing power of money in the several countries. But for those commodities which are traded in world markets world prices exercise a decisive influence on national prices. Neither import nor export duties can establish a permanent differential between the two. Where the country produces an export surplus, the price of that surplus, which is determined in the world market, must eventually control the domestic price; where the country depends upon imports to satisfy its requirements, protective duties are economically justifiable only if they encourage the expansion of domestic manufacture to the point where it is capable of meeting in full the demand in the home markets.

As international economic relations grow in importance, influences transmitted through the world market come to play an increasingly decisive role in stimulating or depressing business in the various countries and produce a striking if imperfect parallel of prosperity and depression throughout the world. If the purchasing power of one country drops because of a special credit and agricultural crisis, the exports of other countries are more or less affected. Large bankruptcies and suspensions of payments are reflected in a drop of imports; and a stock exchange crash in one country may lead to default in obligations and a drop in security quotations in other countries. These observations apply most aptly to those countries which are organically integrated with the world economy; of course if prices, unemployment, security quotations or interest rates in a country fluctuate in a radically different fashion from corresponding economic indices elsewhere, it is

evident that a close relationship with the outside world has not yet been established. Even within the world economy proper, countries differ in economic structure and are not equally susceptible to international economic fluctuations; prosperity and depression are therefore not exactly simultaneous everywhere. Even in these countries changes in business conditions are still dependent upon purely domestic factors, such as crop conditions, efficient organization and management of the financial system, government policies, political upheavals and the like; and in each country, no matter how closely linked to the world economy, prosperity and depression bear a peculiarly national stamp and differ in many characteristic details.

International economic interdependence is reflected also in short and long term finance. Although the general level of rates in the several money markets is determined by causes peculiar to each market, nevertheless a fall of the rate below normal in one country will cause short term funds to flow out and induce a tendency to weakness in the rate in other money markets. Similarly, high discount rates in one market are inevitably transmitted to other markets and induce a corresponding stringency there. No central bank therefore can manipulate rates in its home market without taking into account the existence of other markets not equally subject to its influence. For long term capital international interdependence is not so pronounced. Still there are securities of high international standing which are traded on all the important exchanges and which pass from one country to another as easily as short term funds. Long term loans are sometimes floated with the participation of the financial institutions of a number of countries which take up the issue in agreed proportions; such loans are issued in terms of several currencies to suit the convenience of the buyers. Nor is mediation for long term investments unknown. Thus Swiss banks receive deposits from many countries and are in a position to finance the industries of various countries. In the post-war period London acted as an intermediary between French and American investors and German borrowers, and to a certain extent New York relented funds obtained from France and Great Britain to South American countries. The more customary type of relation in long term finance is, however, the direct one between the creditor and debtor nation and the interdependence is interregional rather than international in character.

International economic relations give rise to a number of international and interregional organizations of an auxiliary nature which facilitate the exchange of information, expedite communication and transportation and bring about the modification of divergent national practices to conform to international standards. Perhaps the most inclusive of such organizations is the Universal Postal Union. There is nothing corresponding to it in the field of transportation, but there exist a number of conventions between several countries regarding the use of railways. Similarly, there is as yet no international organization for bank clearings, although the Bank for International Settlements may eventually serve as such. The International Chamber of Commerce, the economic and financial section of the League of Nations, the International Labor Organization, the International Institute of Agriculture, the International Statistical Institute, provide facilities for the exchange of economic information among countries, carry out research on economic problems of an international character and serve to crystallize world opinion on economic problems. The work of these organizations becomes the basis of international agreements which when once entered upon limit the freedom of action of individual countries and create in the international field a counterpart to government action in national economic life. The list of international organizations of an official nature would be much extended were it to include also regional organizations such as those linking the United States and Latin America, the countries of South America among themselves, countries of central Europe and of the Balkans and the like. The number of semipublic organizations, congresses and agreements joining special interest groups in various countries is even greater. The post-war period was characterized by a striking growth in the number of such permanent or temporary international and regional organizations and by a remarkable extension in the scope of their activities. This development reflects the increase of economic interdependence among nations and an aspiration for the rationalization and systematization of international economic relations.

As the world economy is constituted at present no country, no matter how distant or how large, can be regarded as standing apart from it. Some countries need food for their population and raw materials for their industry, others need manufactured goods; and the development of many

countries depends upon a plentiful supply of foreign capital. No country is now economically independent; in the long run it needs trade with the rest of the world in order to survive, and in the short run it is influenced by the state of business conditions in other countries. There exists thus a broad economic basis for the solidarity of interests among nations.

Dependence upon the outside has its drawbacks as well: the profitable disposal of export commodities is uncertain because of potential foreign competition; the supply of essential imports may be reduced by artificial manipulation or by disturbances in the political balance; capital from abroad may be offered only at the price of concessions which restrict the freedom of political and economic action. These considerations may explain the drive for economic self-sufficiency which was apparent even before the World War and which was very considerably strengthened in the post-war period. The economic readjustments which took place during the war prepared some countries for a greater degree of economic independence than formerly they cared to enjoy, while the new states created by the peace treaties and Russia were eager to place their political independence on an economic basis. Thus old tariff walls were raised and new ones erected, and barriers heretofore unheard of were placed in the way of population movement across national frontiers. In the years 1919 to 1926 currency disorganization added its weight as an obstacle to interchange between countries, and with the beginning of the depression in 1929 restrictions were deliberately made more stringent as the result of a shortsighted policy of national self-preservation.

It does not seem to be open to doubt that the drive for national economic self-sufficiency is inspired by political considerations rather than by economic logic. There is at present no country, not excluding Russia, which commands all the economic factors in sufficient amounts to assure its independence; and even should such independence prove feasible it would not be advantageous from a strictly economic point of view. Technological progress and a rise in the standard of a growing population will in the future be accompanied necessarily by a further extension of international economic relations and an intensification of mutual interdependence. The forms which such relations will assume and the position of each country in the world economy will undoubtedly change. Some

of these changes, those due to industrialization of younger countries, can be more or less anticipated; other changes, those resulting from the progress of technology or from the shifting of the centers of control in various national economies, are at present only a fascinating subject for speculation.

FRANZ EULENBURG

**THEORY.** The theory of international trade consists in the application of general value and monetary theory to a special case in which the economic universe is divided into two or more partially independent units as the result of obstacles to the free movement of the factors of production or of the existence of distinct currency systems. To bring out sharply the consequence of immobility in the factors of production the classical writers assumed that there was absolutely no international mobility of the factors and that there was sufficient internal mobility to equalize the value productivity of each factor in all its employments. They entertained no illusions, however, as to the reality of these assumptions; they moderated their rigor upon occasion and conceded that the differences between inter- and intranational mobility of the factors were differences in degree rather than in kind. Hume explicitly stated that his theory of international equilibrium applied equally to trade between different regions of the same country. Cairnes treated international trade as a special case of trade between non-competing productive groups. Bastable suggested that the term interregional trade would be preferable to international trade because the differentiating factor between domestic trade theory and international trade theory was the existence of barriers to movement of the factors, of which distance was the most important.

The special significance of political boundaries in the study of trade should not, however, be overlooked. Political boundaries tend to correspond with physical barriers or to coincide with racial, linguistic, sentimental, legal, monetary and other differences in population and institutions which operate as hindrances to trade. Political frontiers moreover have been made the basis for the deliberate establishment of barriers to trade and to the free movement of the factors in the form of tariffs, administrative restrictions, immigration legislation, discriminatory legislation against foreign capital, business enterprise and the like. For political reasons the interest in foreign trade is greater than in internal trade,

and statistical information in all countries has been more systematically and fully compiled for the former than for the latter.

The theory of international trade has been generally treated in two main divisions: the theory of international values and the theory of the mechanism of international trade. In both divisions systematic exposition of positive doctrine has been largely confined to the English classical school and its modern English and American followers. Continental writers have either ignored the theory or have confined themselves to criticisms of the validity of its specific propositions but have not attempted to construct an alternative theory. An exception should be made for Pareto, who applied his general equilibrium theory to trade between regions as a special case. The old classical theory has been revised and expanded almost without exception by its own adherents rather than by its critics or as a result of their writings.

The classical theory evolved largely as an incidental by-product of current controversies on practical issues; in the selection of problems and the distribution of emphasis it still reflects clearly the special circumstances under which it was developed. It was never adequately integrated with the general theories of value and price and of money and banking, with a distinct loss to both bodies of doctrine. Moreover the theory has suffered from the fact that with Taussig as the outstanding exception its leading exponents have attempted comprehensive and systematic exposition only in the form of overcompact and over-abstract summaries, in which the short run complications, the details of mechanism and the necessary qualifications, to the elucidation of which they had often made important contributions elsewhere, were either wholly ignored or treated too summarily. Much of the criticism which has been directed against the classical theory of international trade is based on these inadequate summaries and would not have been undertaken by the critics if they had examined the lesser writings of its leading exponents.

The theory of international values has been expounded by Ricardo, J. S. Mill, Marshall, Bastable, Edgeworth, Taussig and others largely with reference to its bearing on the perennial tariff controversy. The central proposition of this theory is the doctrine of comparative costs. It was apparently first stated by Torrens in 1815 but was given special emphasis for the first time by Ricardo in 1817. Adam Smith saw only that free trade made available the benefits of what

Torrens later called territorial division of labor; it involved the specialization by each country in the production of those commodities which it could produce at lower real costs than could other countries. Ricardo argued that superiority in comparative rather than absolute real costs should and under free trade would determine what commodities a country produced. A country which could produce all commodities at lower (or at higher) real costs than other countries would nevertheless gain from trade if it specialized in those commodities for which its comparative cost advantage was greatest (or its cost disadvantage was least). Ricardo presented the doctrine in unqualified and highly abstract form. He supported it by an arithmetical illustration for two commodities and two countries in which it was assumed that prices are proportional to real costs, the latter consisting only of days of homogeneous labor and remaining constant with changes in output. He apparently believed that, given differences in comparative costs, each country under free trade would necessarily specialize completely in the production of that commodity in which it had a comparative advantage and that both countries would necessarily profit from the trade. He adopted an arbitrary but not inconsistent ratio of exchange between the export and the import commodities without apparently seeing any necessity for explaining how that ratio would in fact be determined. He failed, however, to bring out adequately the relation between his comparative cost doctrine and his general theory of international equilibrium.

A succession of later writers have attempted to fill in these gaps. Pennington and J. S. Mill showed that the reciprocal demands of two countries for each other's products in terms of their own products, operating within the limits of the comparative costs, determined the ratio of exchange between the two countries' products and that the equivalence in value of exports and imports (the so-called equation of international exchange) was a condition of equilibrium. The sufficiency of Mill's demonstration that there was a determinate ratio of exchange between export and import commodities has been questioned, and in later editions of his *Principles* Mill added some unsatisfactory analysis to take care of some cases in which he conceded that there were multiple points of possible equilibrium. These were cases, however, of foreign trade elasticities less than unity, which are unlikely to be of practical importance in the analysis of

foreign trade, when a country's entire exports and imports are involved and when for many commodities the purchases can readily be shifted from one country to another with a change in relative prices.

J. S. Mill showed that if one country was of much greater economic importance than the other, under constant costs the ratio of exchange of the two commodities might be the same under trade as they would have been in the larger country in the absence of trade, with the result that all the benefit from trade would go to the smaller country. Whewell showed that in such cases the larger country might not find it profitable completely to specialize in the production of the commodity in which it had a comparative advantage. Mangoldt and Edgeworth showed that if there were more than two commodities, reciprocal demand operating within the limits of comparative costs rather than comparative costs alone would determine which commodities each country would export and import; the result, however, would always be that each country would export commodities in the upper range of its scale of comparative advantage and import commodities in the lower range.

All the writers from Ricardo on and probably even in the mercantilist period were aware that the course of trade was determined proximately by comparative differences in prices; and those who presented their analysis in terms of costs expressed in days of labor—including J. S. Mill, who elsewhere rejected the labor cost theory of value—did so only on the assumption that prices and money costs were proportional to real costs and that days of labor were a satisfactory index of comparative real costs. The task of expanding or revising the theory to take account of differences of wages in different occupations and of other cost factors than labor is still far from accomplishment, but some of the writers in the classical tradition, especially Longfield, Cairnes and Taussig, have made important contributions.

If labor costs are the only costs and differences of wages in different occupations are proportional to differences in the attractiveness of the occupations, comparative real costs in terms of disutility of labor still determine comparative prices and therefore the course of trade. Where the differences in wages are due to the existence of non-competing groups, however, and are not identical in order or degree in different countries, specialization will fail to be carried as far as or will be carried farther than comparative real

costs justify; thus if in any country wages are higher in the industries with a comparative advantage in real costs and if the ratio of comparative wages exceeds the ratio of comparative advantage in real costs, that country will under free trade specialize in the production of commodities in which its real costs are comparatively high. In such cases, however, free trade by operating to lessen the volume of employment in the comparatively overpaid occupations would tend to break down the labor monopoly in such occupations, whereas protection of the high wage industry would tend to perpetuate it.

When factors other than labor are taken into account and variability in the proportions in which the different factors are combined in different industries in the same country or for the same industry for different outputs is conceded, it is permissible to adhere to the comparative real cost type of analysis only on the highly questionable assumption that money rates of remuneration are proportional to real costs even as between different factors, or on the less questionable assumption that in the absence of additional information forces operating to create disparities between real costs and money costs are as likely to be in one direction as in another and will therefore tend to offset each other. On this last assumption comparative cost analysis establishes only a presumption rather than a demonstration of the economic desirability of free trade.

The older writers adhered to the assumption of constant costs, under which average and marginal costs are identical. Later writers pointed out that if production is subject to increasing costs, specialization will tend to take place in accordance with comparative marginal rather than average costs. If the cost curves have different degrees or directions of inclination as between different industries in the same country or as between the same industries in different countries, then the scale and possibly even the order of comparative marginal costs of different commodities in two or more countries will not be fixed but will vary with different degrees of specialization.

Several writers have argued that if a country finds itself at a comparative advantage in industries subject to increasing costs and at a comparative disadvantage in industries subject to decreasing costs, it may lose if it specializes in accordance with comparative costs. If decreasing costs are due to net internal economies of large scale production, individual marginal cost and industry marginal cost will tend to be identical;

and even under free trade no resources will be transferred from decreasing to increasing cost industries when they would have greater value productivity in the former. If decreasing costs are due to external economies, there is possibility of loss to a country from specialization in accordance with individual marginal comparative costs, since the increase in cost due to the contraction of the decreasing cost industry will be borne chiefly by others than those responsible for the transfer of productive resources from it to other industries. But if the external economies are a function of the size of the world industry rather than of the national industry, as may well be the case, transfer abroad of a portion of the national industry will not reduce these economies; and specialization in the increasing cost industries will not be carried farther under free trade than is justified by the comparative value productivities of the transferred resources in the two types of industry.

The most commonly used test of the existence of national benefit from trade, originating in the early part of the eighteenth century, was whether or not a unit of import commodities could be got indirectly through trade at a lower real cost than that at which it could be produced at home. This is still the best available measure of benefit from the marginal units of trade, when expressed in terms of the relative costs of direct and indirect acquisition of the marginal unit of a particular commodity. It is unsatisfactory, however, when used to measure the amount of benefit of trade as a whole, since, as Malthus pointed out, when the imported commodities can be produced at home only with great difficulty, the excess of the cost of producing them at home over the cost of obtaining them in exchange for domestic commodities may far exceed the total national income and may approach infinity. Under free trade a country employs a bundle of productive factors different in size and constituents as compared to restricted trade to obtain a bundle of consumable goods also different in size and constituents. J. S. Mill on one occasion claimed for trade that it increases the national supply of all commodities. Where this is the case it is an unambiguous demonstration of the existence of benefit from trade, if one disregard considerations relating to the distribution of national income or to the comparative intrinsic desirability of the different possible modes of employment of the country's productive resources. This result is not inevitable, however, for under free trade the consumers in the aggregate may choose to con-

sume less of some commodities and more of others than under protection. Adhering to the abstractions listed above the national case for trade is still unambiguous, if on the basis both of their relative market values in the absence of trade and of their relative market values under trade the increase in those commodities which become available under trade in increased volume exceeds in value the decrease in those commodities which become available under trade in decreased volume. From the cosmopolitan point of view trade will meet these tests more often than from the national point of view; and, except for the special cases of national external economies or of trade by nationally monopolized industries without foreign competition, long run restrictions on trade will never meet these tests whether from the cosmopolitan or from the national point of view. The classical theory of international trade does not, as many of its exponents have supposed, demonstrate the national profitability of trade under all long run circumstances, but it does establish strong presumptions in its favor under most practically realizable circumstances and leaves the situation ambiguous in most of the other conceivable circumstances.

So far the discussion of the benefits from trade has taken into consideration only costs, quantities of commodities and relative market values. For a complete analysis it would be necessary also to take into account the variable desires for or utilities of commodities, including consumers' surpluses. But all attempts so far made to introduce utility analysis into the theory of international trade have rested on the inadmissible identification of national demand schedules with national utility schedules.

Other concepts have been used to gauge the trend of benefit from trade as distinguished from its absolute measurement. The oldest, going back to the mercantilist period, is the amount of import goods obtained in exchange for a unit of export goods. This might be called the "commodity terms of trade." Given a common base year and base value for both indices, the trend of the ratio of the export price index to the import price index would measure the trend of the commodity terms of trade, with an increase in the export price index relative to the import price index signifying more favorable commodity terms of trade. A more significant although less used concept might be designated as the "factoral terms of trade" and would indicate the number of units of other countries' products which could be obtained in exchange for the

output of one unit of a given country's factors of production. This concept takes into account both the commodity terms of trade and the costs of production of the exported commodities. For some purposes this concept could be modified so as to take into consideration also the factorial costs of production of the other country. Taussig has introduced a third concept, which he calls the "gross barter terms of trade" to distinguish it from the commodity terms, which he calls the "net barter terms of trade." By the gross barter terms of trade he means the ratio of the physical volume of imports to the physical volume of exports or of their respective money values after correction for changes in the value of the monetary unit. On the ground that imports are what a country gets as a result of its foreign trade and exports what it gives he maintains that the higher the value of imports as compared with exports the more favorable the gross barter terms of trade. This concept is superior to the concept of commodity terms in that it takes into account volume of transactions as well as unit exchange ratios, but it suffers from the defect that it treats credit transactions involving liquidation of previous indebtedness or the incurring of new indebtedness as if, for the time being at least, they were equivalent to the grant or the receipt of free gifts.

Torrens and Longfield appear to have originated analysis of the changes in the terms of trade caused by specific types of disturbances in a preexisting equilibrium. In connection with the controversy as to the relative merits of unilateral and reciprocal free trade during the 1830's Torrens maintained that the unilateral abolition of a tariff would result in an unfavorable shift in a country's commodity terms of trade. Senior and other economists, obviously influenced by their hesitation to make any concessions to the protectionist doctrine, disputed this but it was conceded by J. S. Mill and later writers. Longfield (*Three Lectures on Commerce and One on Absenteeism*, Dublin 1835) replied to the denial by Senior and McCulloch that the Irish suffered economic loss from the absenteeism of their landlords by pointing out the unfavorable effect on the Irish commodity terms of trade which such absenteeism would tend to have.

In the nineteenth century it was generally agreed that the export of capital or the remittance of subsidies or tribute abroad tends to make the commodity terms of trade move against the remitting country while the process of transfer is under way. The post-war discussion of the

transfer phase of reparations and interallied debts has resulted in a fuller analysis of the problem and in serious questioning of the old conclusions. In the traditional mode of dealing with the question it was argued that the preliminary export of gold by the remitting country would lower prices in that country and raise them in the receiving country and that such a relative movement of prices was necessary if the remitting country's exports were to increase and its imports to decrease sufficiently to transfer the payment in the form of goods rather than money. But this can be granted without conceding that the export prices of the paying country need necessarily fall relative to its import prices. The transfer of spendable funds from the paying to the receiving country will lead: (a) to an increased monetary demand in the receiving country for both its export and its import goods; (b) to a decreased monetary demand in the paying country for both its export and its import goods; (c) to an increased monetary supply in the paying country of its export class of commodities; and (d) to a decreased monetary supply in the receiving country of its export class of commodities. Of these changes only (c) and (d) are in character such as to establish a presumption in support of the traditional doctrine. But the net effect of all these changes on the commodity terms of trade will depend on the elasticities and the relationships to the domestic commodity supply and demand functions of all of these elements, and a definite solution would require quantitative analysis in terms of all the significant demand and supply functions. The *a priori* presumption will be stronger, however, in support of the proposition that the factorial terms of trade will shift against the paying country and in favor of the receiving country. There will be even a stronger presumption that the gross barter terms of trade will shift against the remitting country; i.e. that the physical volume of its exports will increase relative to the physical volume of its imports. In order that this should not occur it would be necessary for the commodity terms of trade to shift sufficiently in favor of the remitting country to make possible a relative increase in the aggregate value of its exports as compared to that of its imports, while no change in the aggregate physical volume of its exports as compared to that of its imports takes place.

The theory of international values usually works with comparative real costs and with reciprocal supply and demand functions of one commodity or class of commodities offered or

demand in terms of another commodity or class of commodities received or given in exchange. It abstracts from money, monetary prices and monetary supply and demand schedules. Bastable heralded as Ricardo's greatest contribution to the theory the argument that international trade in a money economy produces the same results as would take place under barter. This abstraction from money was useful as a means of avoiding the complications of a changing value of the standard of measurement itself and of emphasizing the more fundamental factors underlying the monetary phenomena. It has been criticized, however, as leading to the mistaken impression that the monetary mechanism was purely passive and was not itself a factor contributing to the determination of the nature of and the benefit from trade.

✓ In developing the theory of the mechanism of adjustment of international balances the classical economists did, however, take explicit account of money, money prices and the monetary mechanism; and in fact they often expounded it as an integral part of their monetary theory. The classical theory of the mechanism of adjustment of international balances was first clearly formulated in its main outlines by David Hume and was closely approached even by earlier writers; it was used as a refutation of the mercantilist contention that foreign trade can and should be so regulated as permanently to augment the national stock of money. The theory insists upon the existence of a self-regulating mechanism for the international distribution of metallic money, whereby each country gets the amount of money necessary to maintain equilibrium in its international balances. It maintains that if the quantity of money in a country is increased, then, other things remaining the same, prices in the country will rise, exports will consequently decline and imports increase, with the result that the foreign exchanges will move against the country and will tend in some degree to bring about a restoration of equilibrium in the trade balance. If, however, imports continue to exceed exports in value, the exchanges will move to the gold export points; gold will be exported to liquidate the adverse balance of payments; prices will consequently fall at home and rise abroad; imports will fall and exports rise; and equilibrium will be reestablished with the foreign exchanges at or near par, no further gold movements, an even balance of trade and prices higher than before both at home and abroad. This is essentially Hume's account and was reproduced

without substantial change by the classical economists in their general treatises.

For some phases of the mechanism, however, the classical economists introduced in their lesser writings a number of important elaborations and qualifications and in controversy among themselves developed divergent and rival explanations. The first important advance was made during the bullionist controversy in England in the first quarter of the nineteenth century. The results of an expansion of convertible paper currency, circulating alongside and on a parity with standard metallic money and issued freely by a number of banks subject only to the requirement of convertibility, were analyzed by Henry Thornton, Ricardo and other writers. Special attention was paid to the question of the dependence of the amount of note issue by country banks and therefore of the general price level on the amount of note issue by the Bank of England, Ricardo maintaining and others denying the necessity for any such close dependence. Thornton initiated analysis of the mechanism of restoration of international equilibrium when disturbed by other causes than variations in the quantity of money, such as harvest failures or payment of subsidies. He maintained that in such cases equilibrium was restored by the same mechanism as that invoked by Hume to explain the restoration of equilibrium when disturbed by changes in the quantity of money. Wheatley and Ricardo denied this and contended that in the case of non-currency disturbances equilibrium was immediately restored through the automatic adjustment of the demands of the different countries for one another's products, without setting into motion any intermediate mechanism of exchange rate variations, gold flows and price level changes. A number of writers participating in the bullionist controversy made it clear that they saw the distinction between the commodity balance of trade and the balance of immediate indebtedness and that they realized that for the theory of the mechanism of international trade the commodity balance of trade had significance only as the predominant element in the larger balance of immediate indebtedness, which included the invisible as well as the tangible elements in international transactions.

Incidental to the controversy between the currency and banking schools of 1830 to 1860 the theory was further elaborated so as to take account of short run complications and of bank deposits as either constituting currency along with gold and banknotes or as contributing to



the efficiency of currency proper. In the course of this controversy most of the present day doctrines with respect to the part played by the credit policy of the central bank and of the banking system as a whole both in disturbing and in restoring equilibrium in international balances were clearly and frequently although somewhat unsystematically presented. Many of the participants in this controversy, including J. S. Mill and Cairnes (*An Examination into the Principles of Currency Involved in the Bank Charter Act of 1844*, Dublin 1854), dealt with the mechanism not as if it were a purely automatic process, the outcome of the unregulated activities of countless individuals pursuing their private gain, but as managed by the Bank of England and elaborated on the need under a system of credit banking of a central agency which should endeavor to foresee and forestall dangerous gold drains. The increasing importance of central banks and of international short term capital movements later resulted in still greater emphasis in the more recent literature on these phases of the mechanism, especially in discussions of short run disturbances and cyclical variations but, with one important exception, in no radical revision of the general doctrine.

Most of the classical economists followed Thornton and Malthus rather than Ricardo in placing great emphasis on the part played by relative changes in price levels in the adjustment of international balances to disturbances resulting from international capital movements. Taussig following a hint of Cairnes further elaborated the theory by distinguishing between the divergent trends of the sectional price levels, i.e. the price levels of internationally traded commodities on the one hand and of domestic commodities on the other. Cairnes argued that the international transfer of gold associated with such disturbances would of itself constitute a transfer of purchasing power, would therefore operate to increase the purchases of foreign goods in the receiving country and to decrease them in the remitting country even in the absence of price changes and would thus lessen the need for price level changes as a part of the mechanism of adjustment. In recent years Bastable, Wicksell and Ohlin have carried this line of argument still further. Wicksell asserted that a sufficient contribution to adjustment would be made in the absence of price level changes by the increased purchases of exportable goods as well as of imports in the receiving country and by the decreased purchases of exportable goods as well as

of imports in the paying country, which would result in each case from the transfer of purchasing power. Ohlin has emphasized the possibility of the transfer of purchasing power otherwise than through gold movements and especially through international shifts of bank balances. This trend marks essentially a return to the conclusions although not necessarily to the analysis of Wheatley and Ricardo. While these writers correct the predominant overemphasis upon the part played by gold movements and direct attention to a neglected phase of the mechanism, their reluctance to attach any weight to price level changes induced by gold movements as a significant part of the mechanism seems unwarranted on either a priori or empirical grounds. These modern modifications of the classical theory have had practical significance in that they have been used to reinforce the presumption already derived by many economists from the classical theory that the transfer problem in connection with reparations was unlikely to prove a serious one.

The dominant form of classical theory of international trade did not posit any simple relationship between general price levels in different countries, even when these were on a common gold standard. Internationally traded commodities, given a common currency, would have maximum differentials in prices in different countries corresponding to the costs of transferring these commodities from the country of export to the country of import. In the absence of transportation costs and tariffs the scales of relative prices of such commodities would approach identity in all countries, even when the currencies were different. But there would be no simple relationship between the prices of particular domestic commodities or the price levels of domestic commodities as a class in different countries; where these are different commodities, direct price comparison is impossible in any case. If the factors of production employed in one country's export industries have high efficiency measured in the monetary value of output as compared to the factors of production employed in other countries' export industries, money wages and other incomes would be comparatively high in such a country and real incomes would also be high if measured in export or import commodities. But the prices of domestic commodities might be comparatively high and real incomes in terms of domestic commodities comparatively low, if the comparative efficiency in their production was low.

Wheatley, Ricardo and in recent years Cassel and other exponents of the purchasing power parity theory have, however, expounded a simpler theory of international price relationships. According to these writers relative trends of price levels in two countries will be inversely proportional to the trends of the rates of exchange of their respective currencies, so as to maintain constancy in the trend of the ratio of general purchasing power of the two currencies in either country multiplied by their exchange ratio. This theory was applied especially to paper currencies, but Cassel admitted that if valid it should hold also for gold standard currencies. Since under the gold standard variations in exchange rates are limited to the narrow range of the gold points, it would follow from this theory that under the gold standard appreciably divergent price level trends in two countries would be impossible. Wheatley and Ricardo admitted of no exception, but Cassel has conceded that the theory of uniform trends or price levels after adjustment for changes in exchange rates would hold only if no disturbing factors such as changes in transportation costs, tariffs or capital movements occurred. There is an element of truth in the theory. If in one country there is an increase in the volume of currency which affects all prices proportionately within that country and if no other change occurs, then that country's currency should fall in value relative to foreign currencies by exactly the degree in which its price level has risen. But even under the gold standard and even if transportation costs are disregarded, there may be divergences in the trend of the general price levels in two countries, if there are changes in the reciprocal demand of these countries for one another's products due to changes either on the demand or on the cost side. There may even be divergent trends of weighted price indices in the two countries for internationally traded commodities, if the weights used correspond to the relative importance of the different commodities in the respective countries and if these weights differ for the two countries. During a period, however, when the dominant factor in the situation is the variation in the issue of inconvertible paper money, the purchasing power parity theory in the absence of speculative disturbances often gives a fairly satisfactory explanation of the actual course of events. Under the gold standard dependence on a common monetary standard tends to result in a substantial similarity of trend of price levels and especially of prices of internationally traded

commodities in different countries. But there is no simple relationship either between the absolute levels or between the trends of the price levels of domestic commodities in different countries, whether these have paper currencies or different metallic currencies or are all on the gold standard.

The chief difference between the mechanism of adjustment of international balances under the gold standard and under the paper standard is the greater importance under the latter of variations in the exchange rates. The role in the equilibrating mechanism played under the gold standard by exchange rates, gold movements and changes in relative price levels must under the paper standard be carried out by exchange rate changes alone. The contrast, however, is less sharp in this connection between the mechanism under a managed gold standard and that under a paper standard. Under a paper standard price levels are under the control of the paper money and bank credit issuing agencies more completely than under the gold standard. These agencies can keep price levels as a whole substantially free from external influence and can thus throw the main burden of international adjustment on the exchange rates. But the disparity in terms of their own currency which may thus develop between the prices of international and of domestic commodities will ordinarily result in considerable pressure on these agencies to make the price level move much as it would under the gold standard. Even in such a case, however, the movement of prices is the result of deliberate central action and not, as under the pure gold standard, of the automatic response of countless individuals to changes of external origin. No detailed theory of mechanism under the paper standard analogous to that under the pure gold standard can be developed on a priori grounds because of the presence in the former and the absence in the latter of a deliberate and centralized control over the amount of circulating media.

The theory of international trade is almost invariably expounded in terms of free competition within and between countries. The growth of monopolization of industry and the development of government trading, most notably and completely in Soviet Russia but also in other important instances, tend to lessen the applicability of this theory to the actual course of post-war trade. But complete commodity monopolies in world markets are still rare, and trade under partial monopoly conditions is qualitatively little dif-

ferent from trade under perfect competition. Where governments trade as units on behalf of their nationals they can follow other principles than those of buying in the cheapest and selling in the dearest markets and of specialization in accordance with comparative costs, and they may pursue political as well as economic objectives. It is impossible to generalize about such cases, and the only procedure available is to observe the methods and the objectives of the particular policy followed and to compare its results with those which could reasonably have been expected to flow from trade conducted by private enterprise in pursuit of private gain.

JACOB VINER

See: COMMERCE; FOREIGN INVESTMENT; MIGRATION; BALANCE OF TRADE; FOREIGN EXCHANGE; RAW MATERIALS; FOOD SUPPLY; LOCALIZATION OF INDUSTRY; TRANSPORTATION; SHIPPING, COMMODITY EXCHANGES; FAIRS; BANKING, COMMERCIAL; MONEY MARKET; MARINE INSURANCE, CHAMBERS OF COMMERCE; COMMERCIAL LAW.

ECONOMIC POLICY; MERCANTILISM; COLONIAL SYSTEM; FREE TRADE, PROTECTION; IMPERIALISM; COLONIAL ECONOMIC POLICY; COMMERCIAL TREATIES; TARIFF; CUSTOMS DUTIES; DRAWBACK; BOUNTIES; EMBARGO; BUSINESS, GOVERNMENT SERVICES FOR; CONSULAR SERVICE; EXPORT CREDITS; CREDIT INSURANCE.

CARTEL; EXPORT ASSOCIATIONS; DUMPING; AGRICULTURAL MARKETING; FARM RELIEF; VALORIZATION; EXPORT DUTIES.

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INTERNATIONAL WATERWAYS. Under Roman law a navigable stream was a public passage way free for the navigation of all citizens of Rome or of its subjects or allies. The public law of the Holy Roman Empire, which applied in central Europe, contained the same principle. In both empires this question was looked upon as one of internal public law, but the wide extent of their territories and the universality of their claims to dominion made for a general acceptance of the rule of freedom of navigation and commerce over great rivers, such as the Danube, the Rhine and the Oder, which persisted after the political situation had been changed by the emergence of national states, like France, and by the increasing independence of the great princes in Germany.

Freedom of commerce and of navigation was frequently recognized in legal documents of the empire and was expressly declared to be an inter-

national right in treaties affecting the Rhine and German rivers, notably the treaties of Westphalia at the close of the Thirty Years' War. This legal freedom of commerce and of navigation was limited, however, by the rights of riparian lords, of cities and of boatmen's associations. In theory the right of princes and cities to take tolls rested on ancient custom or grant from the empire, but the existence of many illegal tolls is evidenced by provisions in the early treaties requiring their abolition. The tolls were established theoretically as a grant by the empire to provide a means of protection to boatmen and merchants and for upkeep of towpaths and channels, but they were in fact a heavy burden on the navigation of the river and a source of great profit to the territorial princes. The monopoly of navigation on various stretches of the river by guilds of boatmen, the right of merchants in the riparian cities to demand compulsory unloading of passing cargoes and the heavy passage tolls of the riparian princes, made worse by the delays at the numerous toll stations, continued in effect to the time of the French Revolution. The advantage to the princes and to their subjects which came from attracting traffic to the river was the only check on these obstructions. It led on the Rhine to a sort of joint control by the four great Rhine princes. Recognizing the common interest, they agreed with one another to protect traveling merchants who had paid the tolls and to make the examination of cargoes for toll purposes as prompt as possible. A committee was to meet yearly to discuss navigation questions and to advise on improvements on the river and on police measures. While this ameliorated the situation it did not free the growing commerce of Europe from hampering restrictions.

The rise of independent states and the consequent development of international law does not appear to have changed the situation substantially. Early writers on international law accept the existing tolls and ancient privileges but maintain the right of free passage for boats and goods. Grotius argues that no toll can be taken for the exercise of this common right except as a recompense for the cost of protection of travelers and maintenance of the river. Others, however, developed a theory that the law of nature did not permit free passage of goods and that such passage could be claimed by merchants and boatmen of other countries only as a result of contract.

A striking claim for river freedom was made in the eighteenth century. The Treaty of Mün-

ster gave the Dutch the privilege of closing the Scheldt, the estuary which led from the sea to Antwerp, and that closure was strictly maintained. The emperor Joseph II as lord of the Low Countries tried to break the Dutch hold on the river on the ground that the treaty throttled the trade of the city of Antwerp. Through the mediation of France, however, the treaty right was affirmed. Seven years later France, then a republic, took a contrary view. The French army occupied Antwerp and the French Executive Council declared the river open on the ground of natural justice, but only for riparian countries.

After the decree was confirmed by a treaty between France and Holland the French government proceeded to extend by treaty the principle to the Rhine, on which it was a riparian, and proposed that the Holy Roman Empire should agree to apply to the Danube the rule of freedom of navigation for French vessels; but this was not accepted by the empire. As French power was extended on the Rhine, the republic succeeded by the agreement of 1804 in abolishing the guilds and limiting the obstructive rights of the cities to the right of transfer of cargo at Mainz and Cologne. In effect a monopoly of navigation was secured in reorganized government regulated associations on the upper and lower river, into which, however, any qualified boatman might be admitted. Tolls were fixed and could not be increased without the consent of both parties; toll stations were limited in number, but the principle of profit was not abandoned. France and the German princes divided the surplus revenue. The treaty is famous in river history for establishing the first organized system of international river control. It was administered by a director general, appointed jointly by the French government and the archbishop of Cologne, acting for the German Rhine princes. The director general had supervision over the towpaths and the policing of navigation. The cost of maintenance of towpaths was made a charge on the toll revenue. Judicial unity was sought by the establishment of an appeal Board of Jurists, made up of one representative for each party to the treaty and the director general; to this board could be carried rulings of the toll officials involving tolls or infractions of regulations. Such was the situation at the close of the Napoleonic wars. By the Peace of Paris in 1814 the allies went a step beyond the opinions and practise of the French government by declaring the freedom of the Rhine "so that it can be interdicted to no one" and engaged the congress

which was to settle the affairs of Europe to extend the same principle to other rivers.

The Congress of Vienna went on record in favor of freedom of navigation and confided to the riparian states on each stream the duty of organizing its administration as an international system. The principles which were to govern Rhine regulations were laid down in some detail. As a compromise between the general interest in freedom of navigation and the territorial rights of individual states a central commission was set up to make rules and regulations for the navigation of the river and to keep it free of hindrances to navigation, but it was without power to do more than propose the regulations to the states. Compromise again appears in the Rhine courts which were to settle disputes over the tolls and to judge infractions of the regulations. The judges were appointed by the local authorities, but they took an oath to observe the treaty and regulations; and an appeal was allowed from their decisions to the Central Commission itself. As an alternative an appeal could be taken to a higher court of the local state. The number of toll stations and the total tolls were also fixed in the treaty.

It was not until 1831 that the Rhine Treaty was accepted and the commission set up. It functioned well, with certain liberalizing modifications made in 1868 by the Treaty of Mannheim, until the World War. A similar system was applied on the Elbe and on other European rivers and was enacted for the Congo by the Berlin Conference of 1885, but an administrative organ was never set up on the African river. The system was able to deal with the changes resulting from the replacement of boats moved by sail and horse power by steamboats and long fleets of barges towed by powerful tugs. It was adjusted to the commercial transformation by which boats owned by individuals gave way to great fleets of steamers and barges owned by large corporations, which controlled the navigation on the river. It preserved the navigability of the channel in the common interest against threatened interference by bridges and power works. The system of tolls was formally abolished in 1868 and complete freedom of navigation assured to non-riparian boats. Other less important international rivers in Europe were regulated by treaty between the riparian powers, assuring free navigation for riparians and freedom of commerce but without any elaborate machinery for enforcement. Thus freedom of navigation was in principle declared the rule for all

international rivers on the continent, with control over the navigation and detailed regulation vested in the riparian states, which were recognized as having a primary interest.

A notable exception to the principle of riparian control was the European Commission of the Danube created by the Treaty of Paris of 1856 at the end of the Crimean War. The commission was intended at first as a temporary expedient. The permanent control of the river was to be in a riparian commission following the normal European system. There was, however, an urgent need of improvements to deepen the water in the mouth of the river. The powers did not trust Turkey, so the European Commission was set up to do the work and authorized to fix tolls to cover the cost. The commission was composed of members appointed by the great powers, except Russia, and Turkey as sole riparian. It was expected that the commission would have completed its labors in two years, but the weakness and inefficiency of Turkey led to its continuation and to the great increase of its power, so that it finally became the authority which made the rules of navigation on the stretch within its jurisdiction and enforced them through its own administrative officers, who had the power of levying fines. Russia as a great power and Rumania as riparian were later admitted. Guard boats of the great powers represented on the commission were authorized to act against ships flying their flags, as far as the jurisdiction of the commission extended, although it was all on Turkish, subsequently Rumanian, territory. That jurisdiction was extended to the cities on the river to which the seagoing vessels ascended, so that the commission, at first a mere engineering organization on the Danube delta, came to have a very wide authority independent of the riparian state over works and the navigation in the river up to the great ports. On the upper river no plan for a regulating commission proved successful because of political difficulties, but navigation was free to all riparian countries under treaties and in the lower river navigation was free to all flags.

On the European rivers it was evident that there must be control of works interfering with navigation. This was taken care of in the Rhine Treaty by requiring the consent of the Central Commission for the construction of bridges, dams and other works which might hamper shipping. Planning and building works of improvement on the river were left to the riparian states, which defrayed the cost, except in the

notable case of the Danube Commission and in the instance where improvements at the famous Iron Gates, a series of rapids in the same river, were confided to Austria-Hungary, which was permitted to charge tolls to recoup the cost. Normally, however, if the river was improved no extra charge could be made on passing boats. On the Rhine after 1868 all vessels could profit without charge by the expensive works which deepened and rectified the channel.

On the American continents the development followed another course. The great South American rivers were opened to the navigation of all flags by treaties and by unilateral declaration of the individual governments. Notably Brazil proclaimed the freedom of navigation on the Amazon, which is a means of communication from Peru and Bolivia to the Atlantic. There was no necessity on these wide or comparatively little frequented streams for the joint regulation of navigation and for the creation of an organ for quick adaptation of the rules to new conditions arising on the river.

In North America the United States was in the beginning of its history vitally interested in the free navigation of rivers. Both the St. Lawrence and the Mississippi were outlets for great interior American territories. The mouths of both rivers were held by foreign states and the American government was always most insistent on the principle of freedom of navigation for the upper riparians down to the sea and the right to use the port of New Orleans, without which freedom of navigation was of little value. The necessity of freeing the trade of the west had more influence than the acquisition of new territory in leading to the Louisiana Purchase, which put the whole Mississippi valley under the American flag. On the St. Lawrence and other rivers between the two countries the United States and Canada were able to arrive by treaty at a satisfactory arrangement of their disputes over navigation. There has been no necessity for the kind of administration developed in Europe to regulate vessels using the waterway, but the problem of interference with navigation by works in the river caused the creation in 1909 of an international commission, more properly a sort of administrative international court, whose consent is required for the construction of any dams or other obstructions in waterways common to the two countries or for the taking of water from them.

The peace conference after the World War emphasized world wide as against riparian rights

in European rivers, being principally concerned with the great streams flowing in part through the territory of the central empires. Several of the new states created at Versailles—Czechoslovakia, Hungary, Austria—had no seaports but were upper riparians on navigable rivers. France had come back to the Rhine as an upper riparian after having been off the river since 1870. There is also the possibility of the development by the building of connecting canals of an inland water route from the North Sea to the Black Sea much shorter than the sea route and competing with it. There were therefore strong economic and political reasons for the Allies' insistence on the rights of other than riparian states in the control of the rivers. The treaties of peace declared the central European streams international and open to the commerce of all flags. They changed the principle of Vienna which confided the regulation to the riparians, by putting a strong group of non-riparians on the commission which laid down the river statutes and judged river cases. In no instance were the non-riparians given a majority, but no longer was the administration of the Rhine and the Elbe and the Oder looked on as a matter of local concern. International rivers other than those in central Europe were in general left in control of riparians. In the Commission of the Danube which was created as a result of the conference of Paris the non-riparian interest was represented by members of the European Commission, which was continued minus Russia, Germany, Austria-Hungary and Turkey.

Freedom of navigation of international rivers as part of general freedom of communications and transit is fixed as a principle in the Covenant of the League of Nations and has been included in general treaties which assure to all countries signing them free use of international streams passing through the territory of other signatory countries. Machinery has been set up in the League to facilitate the carrying out of the obligation of free transit. The transit and communications organization of the League consists of a permanent secretariat, an advisory and technical committee which meets about twice a year and a general conference meeting every four years. It thus provides a forum for the discussion of difficulties, and it has provided also a method for settling disputes arising on particular river systems under the treaties governing them. Such a difference may be submitted to the organization, which will then investigate through experts and render an opinion which although not binding

may have very persuasive effects. The judicial system of determining the meaning of treaties set up by the League through the Permanent Court applies here also, and a new legal guaranty of order on European rivers and a protection of rights of navigation and use of waters is contained in the clauses put into the post-war river treaties and into the general convention, permitting appeal to the International Court on the part of any one of the states interested.

While there will always be minor disputes between the nations using the rivers, the administration of the Rhine and the smaller central European streams under the post-war order has offered few serious problems and has worked to the general satisfaction of all. The Danube, however, is a more complex problem. While the revived European Commission and the new international commission, which divide the administration between them, have preserved general freedom of navigation, they have been criticized for their failure to perform some of the functions of construction and improvement assigned to them at Versailles and for postponing repeatedly consideration of difficult problems instead of meeting them at once. Nevertheless, many difficulties have been overcome and substantial results achieved.

Freedom of navigation of international rivers is sometimes treated as a principle of international law, and some authors even extend the principle to national rivers; but in practise there have been no cases where navigation even of an international river has been claimed and permitted as a legal right. The United States endeavored to make the point with Great Britain but encountered stout resistance and finally yielded to settling the dispute by a treaty. In Europe the system of treaties covers all the important rivers, and freedom of navigation of international streams has been accepted "as the public law of Europe." The right of navigation is a custom secured by treaty rather than a principle of international law, and perhaps the best proof of its dependence on convention is in the general treaty of 1921 on navigable waters, by which each signatory grants reciprocally freedom of navigation on the portion of international waterways under its jurisdiction. Even, however, if the principle of law were accepted, it would be necessary to have a regulation in detail, which would be possible only through agreement among the states. On crowded rivers there must be a single set of rules and regulations for navigation effective in the territory of all the riparian

states; there must be found some way of regulating the customs formalities and controlling boatmen on the river. Furthermore the right of passage with vessels and goods would be of little importance without the right to use the ports to which the goods are sent, and this must be secured also by reciprocal treaty regulation. Again, many rivers are broken by rapids and falls around which canals have been constructed. If free navigation of a river is to be a reality, the right to use these canals must be permitted. Even if a rule of law authorized joint use of the stream by the riparians, this right would not extend to works constructed by one of the states on its own territory. In practise on the great waterways of the world canals are made free by treaty.

The custom of freedom of navigation, no matter how well guaranteed by treaties, is likely to break down in time of war. Thus during the World War navigation on the Danube was broken up by active naval operations on the river and by the planting of mines, clear breaches of the Treaty of Berlin. It is very difficult in practise to prevent strong belligerent states from using any force at their disposal to defeat the enemy and to keep naval activity off a river which forms a military line.

National rivers are under the control of the national sovereign, who may permit or refuse navigation by foreign vessels. Several South American countries, some by treaty and some by statute, permit free navigation on their streams. Such statutes may of course be repealed at any time, in which case no government whose subjects have been enjoying privileges under the provision has the right to complain. In China the right to navigate Chinese rivers has been given to foreigners by treaty. There is vigorous opposition on the part of many Chinese to this arrangement, but there is not likely to be any change before there has been a considerable development of Chinese navigation. The Chinese object not only to having foreign vessels on their rivers but also to the unfairness of an arrangement which gives to foreigners a privilege on internal Chinese waters which is not granted to Chinese in the territory of the foreign state.

The principle of the first French Republic that a stream is the common property of all the riparians has been fully accepted in Europe and generally applied in other countries, but this recognition has been limited to use for navigation and extended to non-riparians. Only comparatively recently, as the value of streams as a source of electrical power has increased, has the

community of interests theory been suggested as applying to the use of these streams either for this purpose or for taking water for irrigation or other uses. There are many difficulties inherent in the establishment of electrical works so placed that they will involve more than one country. In 1911 the Institute of International Law, representing the best theory on the subject, prepared a draft convention under which the principle of community of interest was to be applied in respect of all the uses of an international river. The institute, however, was ahead of its time, and even in 1921 at the Conference on International Waterways at Barcelona the governments were able to agree only on a general treaty binding signatory states to permit investigation of conditions on their territory by other signatory states, where necessary, to prepare plans for a development and to enter into negotiations for the execution of a project interesting two or more states. Even this mild attempt at securing unity of development has been ratified by few states. The principle of unity of use of streams has been most fully developed in the Treaty of 1909 in respect to boundary streams between the United States and Canada.

Both as doctrine and as practise the question of the right of an upper riparian state to take water from an international stream to the detriment of a lower state has been contested between the United States and Mexico. The United States as an upper riparian has never admitted the right of its neighbor to prevent the construction of dams and the diversion of water from the Rio Grande and Colorado but has admitted that as a matter of equity and comity the rights of the lower riparian should be considered. In the Convention of 1906 the United States government agreed to assure to Mexico a certain flow of water as a result of the Rio Grande irrigation project, although the government declared expressly that this arrangement was not to be considered as a recognition of any right on the part of Mexico. Authors are divided on the question, many maintaining that one country should not be permitted even by works entirely on its territory to make such use of an international stream that injury results to another riparian without the latter's consent. In deciding disputes between the states in the United States the Supreme Court has applied this theory. Other authors agree that the injured state has no legal right to object, but good neighborliness and comity should lead to respect for its necessities. It is probable that the development will

be in this direction. But the principle of community of use has not behind it the long historic development of the principle of community of navigation.

Freedom of navigation of the great canals which join two seas is more far reaching than freedom of rivers. It is the commerce of the world and not the commerce of a group of riparian states that is affected by transportation through the Suez Canal, the Panama Canal and the Kiel Canal, which unites the North Sea with the Baltic. These canals are open by agreement. The Convention of 1888, signed by the great powers and some of the smaller powers of Europe and revived by the Treaty of Lausanne of 1923, requires that the Suez Canal "shall always be free and open in time of war as in time of peace, to every vessel of commerce or of war, without distinction of flag." The treaties between Great Britain and the United States and between the United States and Panama adopt for the Panama Canal the rule that "the canal shall be free and open to the vessels of commerce and of war of all nations . . . on terms of entire equality." The Kiel Canal, by article 380 of the Treaty of Versailles, "shall be maintained free and open to the vessels of commerce and of war of all nations at peace with Germany on terms of entire equality." The right of use by belligerents of the Suez and Panama canals is regulated, and acts of war in their waters are forbidden. The notion of their neutralization is, however, very limited. The United States while at peace will enforce the neutrality of the Panama Canal but is not barred from preventing its use by an enemy. The Suez Convention binds the European powers and has been applied in several wars to assure equality among the belligerents.

After the World War an attempt was made effectively to internationalize the Dardanelles and the Bosphorus by the Convention of 1923. Demilitarized zones have been established on both sides of these waterways and they are controlled by an international commission under the League of Nations. Turkey holds the permanent presidency of this commission. The straits are to be open to merchantmen and war vessels of all powers in peace or war, except to the enemies of Turkey.

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See: INTERNATIONAL ORGANIZATION; MARITIME LAW; NEUTRALIZATION; FREEDOM OF THE SEAS; TERRITORIAL WATERS; WATERWAYS, INLAND; TRANSIT DUTIES; FISHERIES.

Consult: Hershey, A. S., *The Essentials of International*



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INTERNATIONALISM may be defined as the ideal of an organic, supernational society which would include within itself constituent national societies controlled from above but endowed with independent functions and vitality. Implicit in the ideal is the deeplying presupposition that the process whereby the social unit—within which individuals feel themselves bound by ties of mutual sympathy, common interests and moral obligation—has been gradually enlarged through the course of history is capable of still further expansion. Since the beginning of the modern period the dominant unit of moral and social obligation has been the nation, a grouping bound not only by political allegiance and eco-

nomic interests but also by certain elements of a common culture, usually by a common language and invariably by a common historical background of struggle and achievement. While internationalism aspires to transcend national antagonisms, whether due to geographical or to historical forces, and entails necessarily a genuine limitation of national sovereignty, it assumes the survival of nationality in a modified, regulated form. Essentially institutional in its program and objective in its approach, it is distinguishable from cosmopolitanism, which may be interpreted as a subjective state of mind that grasps the unity of mankind without, however, attempting to solve the relations of the part to the whole.

Despite the violent antagonisms which it has aroused ecclesiastical organization may be said to have been on the whole a powerful influence in the evolution toward internationalism. Although the cosmopolitan tradition inherited by the mediaeval Christian world should be distinguished from internationalism proper, which presupposes the existence of national states, it remains none the less true that the mediaeval church created and conserved in the shadowy structure of the Holy Roman Empire at least the aspiration for an international society. This aspiration, which later European civilization never wholly lost, inspired in the period following the rise of the national state a succession of influential projects which were international in spirit. Sully's project for a federation of Christian princes who would assure peace among themselves and incidentally fight the Turks was followed by William Penn's more sincere version, and by stimulating the more systematic proposals of the abbé de Saint-Pierre and Rousseau for a pacific federation it helped indirectly to form the visionary mind of the czar Alexander and thus to shape the Holy Alliance. These schemes were all confined to Europe and based themselves rather on the fraternity which ought to unite Christian princes than on any democratic conception of human brotherhood.

As an effective force, however, the conception of ties wider than national frontiers was forwarded less by speculation than by the struggles of creeds and classes in the modern world. The wars of religion of the seventeenth century, which divided Europe into a Protestant and a Catholic party, reflected, however broadly, a sense of common interests within the rising mercantile and capitalist class in its struggle with feudalism. The Enlightenment of the eighteenth

century, which freed this new outlook of the middle class from its early theological basis, was cosmopolitan. A lay intelligentsia of writers and scientists was winning for itself in this century a new position of leadership. Experimental science was based from the first on international collaboration and created its own world wide republic of learning. It was an age of cheap and rapid translation; what was written in Paris was printed in English within a few months. The philosophers wrote for mankind. The musicians could defy the legacy of Babel. This cosmopolitan outlook the intellectual and artistic world has never since lost. At a later date German music and philosophy and French painting helped to soften a national feud; while a distinctive national note in art could whet the curiosity and sympathy of the rest of mankind.

Moreover the eighteenth century made the immense intellectual advance of conceiving world history as a single evolutionary process. A generation which had read Volney or Condorcet's stimulating sketch could no longer suppose that nations work out their destiny in isolation. When the Enlightenment became with the French Revolution an "armed doctrine," there resulted at least in the earlier phases of the movement a vast international struggle waged by a class, conscious of a common antagonism to priests and kings and of common interest transcending frontiers. Franklin's epigram, "Where liberty is, there is my country," and Paine's crusading retort, "Where liberty is not, there is mine," sum up its spirit. Theoretical speculations concerning an eventual international federation were in the main hasty improvisations ephemeral in their influence. A striking exception, however, is Kant's *Zum ewigen Frieden*, which still retains its value as a clearly formulated and systematic expression of this early liberal internationalism dedicated to the perpetuation of peace. Although Kant's sketch represented on its formal, constructive side a development of the project of Saint-Pierre, it is significant that in harmony with the rapidly emerging spirit of democracy great emphasis is laid upon the stipulation that every member of the international commonwealth be a republic.

This liberal, revolutionary internationalism giving way for a time to the distorted internationalism imposed by Napoleon produced eventually by way of reaction the Holy Alliance. Not genuinely international, inasmuch as it constituted an extreme repression of nationality, the Holy Alliance was a loose union of Old World

"police" states designed to preserve order on the basis of the dispositions of the Congress of Vienna, to keep the peace and to buttress monarchy, conceived as a divinely appointed institution, against the godless forces of revolution. The just hatred which it aroused among democratic and liberal elements in Europe and America has tended to obscure the immense advance which it represented. After the anarchy of universal war it was the first attempt to base order on the consent of the chief governments of civilization. It conceived of its congresses as quasi-sovereign assemblies entitled to make decisions for the general good; nor was its organized conscience wholly absorbed in combating liberalism and nationalism, for it repressed the slave trade also. Fully recognizing the principle that in any part of the world disturbances, however minor, may become matters of universal concern it represented, albeit with the feudal perversity of an older time, a higher sense of human solidarity than did some of the statesmen who broke away from it. Canning, for example, although in fact he helped the cause of freedom, was in principle looking backward when he invoked the "healthy" rule, "each for himself and the devil take the hindmost." It remains true nevertheless that the identification of world order by the Holy Alliance with the pretensions of "legitimate" dynasties and despotic empires discredited internationalism itself and delayed its advance.

This incarnation of internationalism in a police uniform led to popular reactions in various forms, ranging from nationalist risings to the Monroe Doctrine. One of these, although based on a reading of history as the struggle of classes, was the most uncompromising assertion of an international position yet uttered. Karl Marx through his Hegelian training belonged, as it were under a bar sinister, to Kant's family. The *Communist Manifesto* proclaimed the solidarity in interest and feeling of the toiling masses the world over, regarded national governments and the sentiment of patriotism that they foster as devices of the capitalist ruling class to enslave the proletariat by dividing it and based the modern socialist movement on the watchword "Workers of all lands unite." Victory would mean the abolition of class and therefore the complete unity of mankind. The Socialist International in its first form aimed at this unity through the creation of a world wide party of workers. The fact that it was composed of individual members pledged to a personal allegiance

led, however, to fatal internal dissensions; and therefore when it was later revived as the Second International it was a federation of autonomous national parties, which none the less obeyed the resolutions of its periodical conferences on broad questions of principle and strategy. While recognizing the fact and sentiment of nationality the theorists of the Second International, notably Jean Jaurès, emphasized its cultural aspects, the spiritual heritage which a society based on equality would bring within the grasp of every working citizen. The ethics and to a great extent the actual practise of the movement ranged it in opposition to every form of chauvinism, militarism and imperialism. The duty of a good socialist was to combat the aggressive and acquisitive designs of the ruling class of his own country, trusting to his comrades in other lands to do as much. Socialist parties tried within the limits of their influence to extend their protection to the subject populations of the empire to which they belonged. With international organization, save on this class basis, a logical Marxist was not concerned: that would come with the triumph of the revolution. The World War subjected the Second International to a test which revealed how superficial was its faith in this revolutionary creed; but there were distinguished exceptions, notably the Independent Labour party in Great Britain, the Socialist party in the United States and the Independent Socialist minority in Germany.

A working model of an international socialist federation now exists in the Union of Soviet Socialist Republics. Although it is more highly centralized than any other federation in the world, its component republics in theory are sovereign and enjoy the right of secession. Actually its unity is preserved and internal disputes composed by the tightly disciplined Communist party, which exercises in all of them the dictatorship of the proletariat. However open to criticism in other respects, it has solved successfully the specific problems of nationalism. Russians—Great, Little and White—Tartars, Georgians, Jews and many backward Asiatic peoples enjoy within it complete equality, are helped to preserve their languages and their distinctive cultural traditions and find in the Communist party a ladder which may, in fact does, lead members even of the minor races to positions of the highest influence in the federal government. It is possible moreover to reconcile a considerable measure of national and regional

autonomy with an economic structure that plans and coordinates production, consumption and external trade over the whole of this immense continental area. The theory of the Communists is that as the world revolution spreads other socialist republics will enter this union on the same terms. The U. S. S. R. is not a Russian state: it is an international society and a rival to the League of Nations.

After the disappearance of the Holy Alliance its place throughout the latter part of the nineteenth century and the pre-war years of the twentieth was partially filled by the concert of Europe. This loose association of great powers had no permanent organization and functioned only in emergencies—arising chiefly out of the Eastern Question, in which lay through three generations the chief risk of war in the Old World. Preoccupied with the possible break up of the Ottoman Empire, the Concert of Powers alternated between the imposition of inadequate reforms and the repression of nationalist insurgency. It had no rigid legitimist principles, such as those of the Holy Alliance; if its bias was conservative leading it on occasion, as in Crete, to check rebellion by armed force, it was influenced chiefly by the dread that any disturbance of the status quo would precipitate a major war. Although resorting now and then to formal conferences it reached most of its decisions through ordinary diplomatic channels. Its prestige served as a check upon antisocial ambitions and kept alive a certain faith in the authority of international opinion and the possibility of united international action, although its actual constructive achievements, such as the regulation of the Danube as a free waterway and the creation of an international gendarmerie in Macedonia, were few in number. Its work in the Near East served in certain respects as a model in the settlement of the somewhat analogous Moroccan and Chinese questions. Within its limited range of action it constituted a nucleus that might have developed into a kind of oligarchical international authority. It had behind it, however, no body of popular opinion, no proclaimed principles, no prophet who might have done for it what Wilson did for the League of Nations. Essentially an improvisation, it left intact the ultimate right of a great power to do what seemed good in its own eyes. But its main defect was insincerity. Throughout its long career of spasmodic service to the cause of peace the powers that composed it were rendering international cooperation in the long run impossible

by their competitive armaments and the alliances that ranged them in two camps more permanent and better knit for action than the concert itself. The Great War was an outcome of this very Near Eastern question and of the failure of Sir Edward Grey to mobilize the concert to regulate it.

The collapse of the concert in 1914 set the central problem of internationalism which the world has since struggled to solve. The value of the ad hoc conference was still recognized, but it became increasingly apparent that improvisation on the eve of an emergency was not enough and that a permanent organization was necessary. Moreover since any major disturbance might lead to a world war, it was unrealistic to confine the new concert to Europe or to hope that disputants in the hot hour of anger would submit themselves to the judgment of their peers. If confidence was to prevail, if the old competitive armaments were to be avoided, each nation must have from its neighbors a pledge that they would follow some recognized pacific procedure. Finally, if in spite of all an aggressive power should break its bond, the rest of the world must be mobilized to support the innocent victim.

Out of such reasoning grew the League of Nations. Primarily an international organization to enforce peace, the League has exerted an unprecedented stimulus on the development of internationalism. With astonishing suddenness a world which hitherto had organized itself permanently for international ends only in such minor fields as the postal and quarantine services provided itself with an organization which unfriendly critics could describe as a superstate or a world government. The inaccuracy of this description is evident from the fact that member states seem to surrender nothing of their sovereignty, save in so far as every treaty is a voluntary restriction of one's supposed right to do as one pleases. No subject or field of action is abandoned by the members and made over, as in a federation, to the League. It can take no action and impose nothing in the nature of legislation, save with the consent of every member of its Council or Assembly. None the less, if and when its Council acts—as, for example, to impose sanctions—every member of the League is involved in the consequences. A pledge once voluntarily given can be enforced. A disputant moreover loses his vote for the time being in the Council and cannot invoke the rule of unanimity to stop its action. In these respects the League does involve a real restriction of sovereignty. Again, in

theory, if its machinery of conciliation and arbitration worked reliably, the great powers would surrender the advantage of negotiation inherent in the possession of unrestrained force.

It seems probable in retrospect that the founders of the League went at once too far and too fast and yet not far enough. The question arises whether perhaps they conceived their problem too simply as the abolition of war. The ultimate cause of war is the survival of sovereign national states which claim the right to exert their will for their own ends subject to no judge save themselves. But sovereignty can hardly be limited in one particular if it retains Old World nationalist habits of action and thought over the rest of its field. While on paper the League is well equipped with all the powers necessary to prevent or stop the physical act of war, it lacks the means to redress the grievances or meet the needs that may drive a wronged or ambitious nation into war—pressure of population, the need of markets, the lack of raw materials, the suppression of nationality. With none of these can the League deal directly, for all of them belong to the sphere of domestic jurisdiction, which it must not invade. It has the power to stop war, but it lacks the ability to bring about by peaceful means the changes which desperate nations attempt by violence to hasten.

Peace, in other words, is but a single aspect, a function, of internationalism. It cannot be insured without an advance into forbidden fields—above all into the economic field—which seem at first glance only remotely involved. So much indeed the League seemed to realize as soon as it began to function. It has discussed tariffs, the gold standard and the overproduction of coal, but always on the understanding that it has neither the intention nor the right to promote action in the sense of the findings of its commissions and that it contemplates no modification of national sovereignty such as would permit of habitual, organized cooperation in the economic field and no common action capable in the last resort, in case of sufficient gravity, of overriding the will of obstructive states.

And yet the world in the last two generations has become a single economic unit. The annihilation of distance by modern means of communication was the first step in this evolution. The next was the development of machinery incessantly demanding a market for its ever rising flood of products. Money and capital have become as mobile as goods, traveling by cablegram across frontiers with baffling rapidity. In-

vestment knows no patriotism; whole countries or their major industries at least may pass in a few years into foreign ownership. The collapse of a Viennese bank may cause in London first a financial and then a political crisis. In the eighteenth century two magistrates strolled round the market place of each little country town in England and fixed the price of wheat. Today it has a world price, which shifts as a few cosmopolitan dealers study the cablegrams that report on harvests and the movements of ships from Winnipeg to Bombay and from Buenos Aires to Odessa. Gold alters its purchasing power as bullion is shipped from Paris to New York. The level of the gold reserves in the vaults of Wall Street may determine the price at which the Indian peasant can sell his rice and with it his ability to pay taxes, rents and usury, on which again his contentment and political loyalty are contingent. A speculative boom in New York followed by a sharp contraction may start a slump that counts its unemployed victims by twenty-five millions the world over. In a word, our political structure no longer answers the economic realities. National sovereignty with its restricted territory was an obsolescent arrangement in the days of sailing ships; the airplane and wireless telegraphy have made of it a solicism.

The World War drove a large part of the world to the perception that some measure of international political organization was necessary. The question now arises whether the world wide depression will make it apparent that economic anarchy is no less devastating and that tariffs, currency and the price level are matters of vital concern calling urgently for international planning by a permanent international organization. If such controls were instituted, the purely political and military problems which concert and League have sought to solve would be immeasurably eased. Thought and sentiment would adjust themselves to the wider horizon. The League or whatever organization may replace or supplement it would gain a new prestige and power. In proportion as it confers benefits it may dispense with coercion: the establishment of economic stability would obviate the necessity for sanctions, since an offending state could be threatened with exclusion from economic privileges and advantages. Frontiers under such a regime would lose much of their importance, and territorial changes would be easier to effect. Nationality in such a world would retain and might even deepen its cultural significance. The

nation state, ceasing to act beyond its frontiers with fleets and armies and admitting a measure of regulation over its economic policies, would work out the more intensively its distinctive conception of social life.

A realistic thinker, while admitting the trend of economic development toward internationalism, will not underrate the obstacles. It may be that machinery has outpaced intellectual growth and that obsolete habits of thought and archaic emotional associations will continue to forestall rational attempts to amend overrigid constitutions. More formidable still is the opposition of interests which rely on national diplomacy and armaments for furthering or defending their economic pursuits abroad. Again, one may doubt whether collaboration is feasible among states, some of which are democratic, some Fascist, some communist. Kant admitted to his international federation only republics, Wilson wished to exclude autocracies, Marx and Lenin welcomed only the classless state. But despite the difficulties inherent in the task new organs of international direction and control must somehow be evolved to keep pace with the triumphs of mechanical efficiency.

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*See:* INTERNATIONAL RELATIONS; PEACE MOVEMENTS; INTERNATIONAL ORGANIZATION, LEAGUE OF NATIONS; HOLY ROMAN EMPIRE; HOLY ALLIANCE; CONCERT OF POWERS; FEDERALISM; SOCIALISM; COMMUNIST PARTIES; COSMOPOLITANISM; NATIONALISM; SOVEREIGNTY; NATIONALITY.

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1929); Brailsford, H. N., *Olives of Endless Age* (New York 1928).

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INTERNMENT. See ENEMY ALIEN; NEUTRALITY.

INTERPELLATION. An interpellation is a demand addressed by a member of parliament to a minister for a public discussion on some definite subject which may relate to the general policy of the government or to some question of detail. Originally designed to elicit information and to serve as the text for a clarifying debate, the interpellation has become one of the most important means by which legislative control of the executive is made effective under the cabinet system of government. While it is not used in England, where the cabinet is interrogated through the written question, which does not of itself lead to debate and a vote, the interpellation has become rather generally accepted on the continent as a necessary accompaniment of ministerial responsibility.

It has been most elaborately developed in French parliamentary procedure and is used much more frequently in France than in other countries. Although a procedure resembling the interpellation was adopted by the Constituent Assembly in 1791, it seems to have been abandoned within a few years. The right of interpellation was definitely established in the French Chamber in 1831 without any change in the written rules of the Chamber but merely as a logical corollary to responsible government. With the coup d'état of 1852 the right was suppressed along with the parliamentary control of the executive and was reestablished partially in 1867 and entirely in 1869 with the return to responsible cabinet government.

The French parliament uses both oral and written questions as well as the interpellation. The former, which are rarely used, can be asked only if the minister consents; they must be asked at the close of a sitting and not more than two questions are permitted at one sitting. The deputy is allowed fifteen minutes in which to present his question and the incident is closed with the reply of the minister, except that the deputy may be given five minutes of rebuttal. No other speakers are permitted. Written questions are

very numerous in the Chamber of Deputies. Within eight days after they are submitted to the assembly they must be printed in the *Journal officiel* together with the answer of the minister, although the latter may consist merely of a statement that for reasons of public policy the minister cannot reply or that he requires more time in which to assemble the material for a reply. Written questions do not have much connection with parliamentary control of the executive but are used primarily to attract attention to a deputy, to his public spirited curiosity and to his concern for certain interests.

Oral and written questions are thus unimportant in France, because interpellations occupy the center of the parliamentary stage. The interpellation is a request for information which the government cannot ignore. The demand is made in writing to the president of the assembly, who reads it to the assembly. A member of the government suggests a date on which the minister will reply and the assembly then fixes a date without debate, although the author of the interpellation may be allowed five minutes in which to reply to the government. The discussion of the motion to fix a day cannot, at least in theory, go to the merits of the subject; but the vote is politically important, for the government may fall if it puts a question of confidence and is not permitted to have its way in respect of indefinite postponement or the selection of a date satisfactory to it. Interpellations relating to internal affairs cannot be postponed for more than one month, but those relating to foreign affairs may be postponed indefinitely. A strong ministry can force the indefinite postponement of embarrassing interpellations; weak ministries must consent to discussions which they wish to avoid.

On the date set the author is allowed one hour in which to present his interpellation. The minister replies and the author is then allowed priority in answering. After one deputy has spoken, closure may be applied; but usually the debate is permitted to proceed. It is closed by a motion to pass to the order of the day, which may be either *pur et simple* or *motivé*. The former, which may be moved verbally and has priority, expresses neither approval nor disapproval of the government. If such a motion is not made or is defeated, the assembly is usually called upon to choose between several orders which are *motivés*, or qualified by some expression of censure or praise of the government. The various motions are adroitly phrased so that they will isolate particular issues and will serve to catch the greatest

number of deputies. The question of priority between the various motions is determined by the assembly. Where the order of the day *pur et simple* is not proposed or is defeated and where the issue is very complicated, a motion to submit the question to one of the standing committees or to a special commission may be made and has priority over the qualified orders. Where the order finally approved by the assembly is obviously contrary to the tacit or expressed wish of the government or is a serious criticism of its policy, the government may resign.

With a general debate on the various motions, with a vote on which order shall have priority, with a vote on the order selected and with explanations of individual votes under a five-minute rule, the discussion of interpellations can manifestly consume a great deal of time. Complaints of the waste of time are frequent. The ministry presided over by Méline from 1896 to 1898 replied to more than two hundred interpellations. The prime minister told the Chamber of Deputies on July 12, 1909, that there had been 293 interpellations besides 76 questions in three years of that legislature. Nor, save under the Poincaré Ministry of National Union in 1926, have recent chambers been less inquiring. The ordinary session of 1929 (January 9 to July 26) and the extraordinary session of the same year (October 22 to December 29) devoted 28 and 18 percent respectively of their time to interpellations. The extraordinary session is for budget purposes; and since it concentrates on fiscal matters, interpellations are not so frequent. French ministers reply to interpellations in the Senate as well as the Chamber, but the upper house does not demand as many debates as the lower.

Interpellations cover all sorts of subjects. Petty incidents relating to the local police or insignificant functionaries, the sermon of a country curé, municipal activities, lectures of university professors—on such minor matters ministers have had to consent to be interpellated. Even when conditions are most favorable for the cabinet, interpellations put a tremendous drain on ministerial strength and time. On the other hand, it is the business of a parliamentary body to inform itself as to what the executive is doing and to exert control when control is needed. Criticism of the French machinery therefore should be directed to the manner in which the machinery functions and not to the theory which underlies it.

In continental countries, although procedure

in general follows the French model, interpellations are relatively less important. Furthermore, while in France the right to present questions and interpellations belongs to every individual member, in many countries the signature of a certain minimum number of members is required. In France, partly because the legislature exercises a greater supervision over the details of executive action and partly because the highly centralized administrative system broadens the range of subjects which are of interest to the interpellators, the device is more frequently used, more occasionally abused and always more discussed. To this result the amorphous character of French political parties and the instability of cabinets have contributed. It is not without interest, however, that half of the eighty odd cabinets under the Third Republic have resigned because of the general political situation or for other reasons which were unconnected with adverse votes in the Chamber of Deputies. Interpellations, however, hold the executive to accountability even though the *méfiance* of the Chamber may not be formally expressed.

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See: PROCEDURE, PARLIAMENTARY; CABINET GOVERNMENT; LEGISLATIVE ASSEMBLIES, section on FRANCE; GOVERNMENT, section on FRANCE.

*Consult.* Onimus, James, *Questions et interpellations* (Paris 1906); Dubuc, Joseph, *La question et l'interpellation* (Paris 1909); Pierre, Eugène, *Traité de droit politique, électoral et parlementaire*, 2 vols. (5th ed. Paris 1919) p. 687-709; Esmein, A., *Éléments de droit constitutionnel français et comparé*, 2 vols. (8th ed. by H. Nèzard, Paris 1927-28); Duguit, L., *Traité de droit constitutionnel*, 5 vols. (2nd ed. Paris 1921-25) vol. iv, p. 381-90; Sait, E. M., *Government and Politics of France* (New York 1920) p. 236-42; Lowell, A. L., *Governments of France, Italy, and Germany* (Cambridge, Mass. 1914) p. 93-102; Finer, Herman, *The Theory and Practice of Modern Governments*, 2 vols. (London 1932) vol. ii, p. 869-74, 1055; France, Chambre des Députés, *Règlement de la chambre des députés* (Paris 1926) ch. xiv.

## INTERSTATE COMMERCE

UNITED STATES. The relations of government to trade and transportation are sufficiently difficult in a unitary state. The complications of a federal state accentuate the difficulties. In the United States these difficulties are implicit in the concise phraseology of article 1, section 8, paragraph 3 of the constitution: "The Congress shall have Power . . . to regulate Commerce with foreign Nations and among the several States, and with the Indian Tribes." In the beginning, however, were not the words but the warm and lively issues which engendered them.

The clause was conceived as a means of composing the commercial rivalries among the states created by the revolution. Beginning in 1784 protective tariffs were enacted by New England and most of the Middle States, the burden of which fell chiefly on the consuming states with a less flourishing foreign trade. Additional tribute was exacted from the coasting trade, notably by New York, through the imposition of clearance fees. Madison drew a classic picture of "New Jersey, placed between Philadelphia and New York, . . . likened to a cask tapped at both ends; and North Carolina, between Virginia and South Carolina, to a patient bleeding at both arms." Retaliatory measures invited attacks and reprisals, with the inevitable devastating consequences which experience with international trade feuds since the World War has made all too vividly clear. New Jersey and Delaware adopted a contrary expedient, the establishment of free ports, and thereby weakened the resistance of the states as a whole to the discriminatory treatment accorded American shipping by Great Britain, France and Spain. For the fledgling states the constitution and the commerce clause in particular were expected to afford relief and stability.

Continuously from its adoption the commerce clause has been the vehicle for settling dominant issues of national economy as well as of politics. The legal form which these problems have most persistently assumed reflects the historical basis for the grant of power to Congress. With increasing frequency courts have been called upon to determine the scope of authority of the individual states over activities not isolated within the boundaries of a single state.

The question first came before the Supreme Court in *Gibbons v. Ogden* [22 U. S. 1 (1824)]. Speaking for the court Chief Justice Marshall held invalid a New York law granting to Livingston and Fulton the exclusive privilege of navigating the waters of that state by steamboat and sustained the right of competitors to navigate between New York and New Jersey under a coasting license sanctioned by an act of Congress of 1793. The effect upon commerce was immediate and far reaching. In New York as well as in several other states which had granted similar monopolies the number of steamboats in service greatly increased, with an attendant sharp reduction in fares. The legal import of the decision is enveloped in considerable fog. The case is voluminously cited for the broad doctrine that power over interstate commerce is

confided by the constitution "exclusively" to Congress. This interpretation neglects the important ingredient, relied on by counsel and court, of a conflict between state and federal statutes affecting the same subject. Nor did the decision in the absence of control by Congress deter states from granting monopolies of interstate ferriage, of land transportation and later of telegraphic communication. It has been suggested plausibly that at the time the power of Congress over interstate transportation was conceived to embrace only navigation. But this limitation merely expresses evanescent imagination. In 1866 Congress ended the grant of monopoly of railroad and telegraph service between states.

During the quarter of a century following *Gibbons v. Ogden* the meaning of the commerce clause became the sport of confusing debate. The conflict without was reflected within the Supreme Court, and differences among the judges fostered the conflict. Some of the justices rested approval of state action upon subtle distinctions regarding the true aim of contested legislation: a regulation of commerce was invalid, while a regulation of health or safety was permitted, although no practical difference was discernible to an intelligence not steeped in the sophistications of legal dialectic. Other justices, defining powers according to their consequences, insisted that the states regulated commerce when they affected it. But these judicial pragmatists differed among themselves as to the constitutionality of such regulation.

These doctrinal conflicts were composed by events, not by the harmonics of disputation. The development of new modes of transportation provoked increasing exertion of state power and gave rise to new controversies over interstate commerce. The struggle between steamboat and railroad interests for dominance in transportation was brought into focus in the suit by Pennsylvania [*Pennsylvania v. Wheeling etc. Bridge Co.*, 54 U. S. 518 (1851)] to enjoin the maintenance of a bridge across the Ohio River, the construction of which had been authorized by Virginia, on the ground that it would impede navigation to Pittsburgh. During this period also several instances of social legislation were forced to run the gauntlet of the commerce clause. Some were sustained: a New York law requiring masters of incoming vessels to furnish information concerning passengers and laws of three New England states prohibiting the sale without a license of liquor brought in from another state. But a Massachusetts measure impos-



ing a tax on incoming vessels for each passenger, although designated a health law, was held invalid by a sharply divided court. Behind these legal controversies, often sufficiently heated, loomed the burning issue of slavery. A number of southern states had passed laws to exclude free Negro laborers. The relevance of the decision holding the Massachusetts immigration law invalid was apparent to press and public no less than to court and counsel.

Only an awareness of the issues which lay beneath the surface of these cases and of the tenuous and frequently scholastic reasoning by which they were formally decided can reveal the full meaning of *Cooley v. Board of Wardens of Port of Philadelphia* [53 U. S. 299 (1851)]. Succinctly stated the doctrine is that over subjects of commerce which are "in their nature national, or admit only of one uniform system, or plan of regulation" Congress alone may legislate, while over subjects of commerce concerning which there is a "superior fitness and propriety, not to say absolute necessity, of different systems of regulation" state legislation is valid until supplanted by Congress. This decision afforded a candid basis for sustaining state regulations of interstate commerce and as frankly made the determination in each case depend upon judgment and judgment by a majority of the court as to the propriety of the regulation. By making the question of constitutionality turn not upon abstract notions regarding the nature of state powers but upon their concrete and multifarious applications the decision in the *Cooley* case shifted the center of attention to actualities in the disposition of questions under the commerce clause. Thus even in local matters state regulation becomes invalid if unduly burdensome to interstate commerce, while even commerce national in character may be subjected to state regulation if the effect is "remote," "indirect" or "incidental." These are questions of reasonableness and therefore become matters of degree, of more or less, depending for their adjustment not upon tall talk, upon resounding generalities, but upon the relevant facts concerning the necessity or appropriateness of the challenged regulation, the local benefits to be secured and the countervailing cost or inconvenience to interstate commerce. So essential are these specific justifications or handicaps that the same statute which has withstood a blanket charge of "burdening" interstate commerce may succumb before the shrapnel of facts and figures [compare *Southern Ry. Co.*

*v. King*, 217 U. S. 524 (1910) with *Seaboard Airline Ry. v. Blackwell*, 244 U. S. 310 (1917)]. Indeed more recently the Supreme Court has been disinclined to decide at all unless the record adequately discloses the elements of the specific situation. If the pertinent data concerning local needs and the degree of interference with interstate commerce are lacking, it is ill advised to sustain or to invalidate local control. There is available the sensible procedural device of remanding the case to the lower court for the necessary findings of fact [*Hammond v. Schappi Bus Line*, 275 U. S. 164 (1927)].

The process of adjusting the interacting areas of federal and state authority over interstate commerce testifies to the free play left by the framers of the constitution to judicial and political construction of that document. In this field certainly constitutional adjudication is largely borne on the tide of circumstance. Matters which once were within state competence may be withdrawn: the power of a state to prohibit discriminatory interstate rates was not denied until 1886, in *Wabash, St. L. & Pac. Ry. v. Illinois* (118 U. S. 557)—a decision which precipitated the passage of the Interstate Commerce Act in 1887. Yet in the absence of congressional action a large measure of authority reposes in the states to satisfy needs for which a uniform regime is not required. The issue here is not whether federal action would be preferable to state but whether state action or none at all is to be preferred [*Minnesota Rate Cases*, 230 U. S. 352, 402 (1913)]. Even over matters intimately affecting interstate carriers themselves, such as quarantine and inspection, wharfage charges, pilotage, the improvement of rivers and harbors, the construction of dams and bridges, the misconduct or defaults of carriers, the states have been allowed to legislate until Congress has moved. Again, states may enforce social policies directed not at the carriers but at articles of commerce which a state considers socially injurious. In enforcing such local policies the states encountered the "original package" doctrine, one of the most beclouded and casuistic conceptions of American constitutional law. Shorn of its qualifications and complexities it means that articles transported from another state are immune from state regulation so long as they remain in their original packages or have not been resold locally. Obviously this doctrine opens up broad avenues of evasion of state policies through the shipment of proscribed articles from out of state sellers to local con-

sumers. The main doctrine therefore brought its confining counterdoctrines. In the first place, noxious articles were deemed outside its sway—state policy in part determining what is to be treated as noxious. Thus articles fraudulently misbranded or unfit for consumption may be excluded upon arrival. In the second place, Congress by its own legislation may complement state action in order to achieve state policy. In practical terms, the allowable range of state power may be merely power on paper unless effectuated by the control of Congress over shipments into the state. The best known instance of this collaborative effort is the Webb-Kenyon Act of 1913 allowing state prohibition laws to apply to liquor upon its arrival in the state. The same expedient has been applied to the undesired introduction into states of such diverse products as food, explosives and plants. The possibilities of the device in the economic field are suggested by the Hawes-Cooper Act of 1929, effective January, 1934, which by applying the same principle to interstate shipments of convict made goods permits the operation of what are in effect state antidumping laws. If frustration of state policy is to be prevented effectively, however, this scheme is always open to two further difficulties, one legal, the other practical. Although the validity of state action under a Webb-Kenyon Act is established, there remains in specific instances the preliminary question of the validity of the congressional act itself as a genuine regulation of commerce. Thus, may Congress protect the industrial standards of a state by authorizing the exclusion of goods manufactured in states maintaining lower standards? By the logic of analogies there should be no doubt. But the odd member of the Supreme Court has from time to time been singularly fertile and effective in the invention of doubts. Moreover enforcement by the states of policies so easily defeated by inroads from other states may require more and better equipped officials.

Legal doctrine has likewise accommodated itself to the demands of the expanding national network of economic forces. If congressional action may invalidate state regulation of interstate commerce it may also invalidate state regulations which had theretofore not been banned by the commerce clause. In its earliest and simplest form this principle derives from *Gibbons v. Ogden* and is merely the rule that a state law must yield to a federal law dealing with interstate commerce if the two are "in conflict."

Frequently, however, there is no explicit conflict between the two. In action they may not move in overlapping spheres. Yet the efficient operation of the federal law may depend upon its supersession of the state enactment. A federal safety appliance law describing requirements for railroads engaged in interstate commerce must apply, if it is to be efficacious, to cars of the railroad even though they are used solely in intrastate commerce. Where Congress has manifested an intention "to occupy the field," so runs the conventional formulation for these adjustments, state authority in that field must give way. This is of course a figurative field, and merely the compendious expression of the court's sense of policy. "The intention of Congress" not infrequently is non-existent or too obscure to be discovered. Here no less than in cases where Congress has not acted the court not only does but must exercise a practical judgment. Its chief applications are evoked by railroad regulation and concern rates, issuance of securities, liability to shippers and passengers and industrial relations. The questions of national authority which these raise tend to become questions of the statutory powers of the Interstate Commerce Commission (*q. v.*).

Flexible as are the bounds of federal and state authority, the newer forms of interstate enterprise transcend the simplicity of the traditional categories of governmental control. The intricate corporate arrangements in the public utility field raise particularly acute problems. The divorce of ownership from operation puts questions not dreamed of in the constitutional philosophy of John Marshall; whether, for example, rates charged to the consumer by an operating company can be regulated effectively without control over the managerial and financial activities of the holding company and if not, what mechanism of control should be adopted. Direct grip by law, state or federal, over holding companies appears inevitable. Indirect control by the states through scrutiny of the intercorporate relations of the local operating units is an alternative which has received impetus through recent Supreme Court approval [*Smith v. Illinois Bell Tel. Co.*, 282 U. S. 133 (1930)]. But technological changes even more basic than financial have begotten new situations for which old instruments of government will no longer suffice. The precedents in the law books are very tenuous aids for the solution of problems which the radio, motor carriers and electric power present to legal statesmanship. And to

look for a single solvent is to seek the philosopher's stone. In the electric power industry, for example, if the processes of law and legal administration are to be effective they must heed the economic interaction of the factors of generation, transmission and distribution, the economic interplay between local and interstate transmission, the relative volumes of intrastate and interstate transmission and the regional or national character of the interstate transmission itself. These and conundrums like them are now being explored by the Federal Trade Commission and will for many years continue to tax all the resources of wisdom of the Federal Power Commission (Federal Power Commission, *Eleventh Annual Report*, 1931). There is a growing realization that these issues cannot be settled in terms of explicit duality of state and nation. That simple dichotomy may be ill adapted to deal with regional forces ministering to regional prejudices. A variety of legal devices has been proposed to take account of these significances. On the administrative side it has been suggested that state boards act jointly as regional commissions or that a federal commission be supplemented by regional boards locally or federally appointed. On the legislative side the constitution offers the device of interstate compacts entered into with the consent of Congress. Legal inventiveness is not restricted to a few fixed legal categories when called upon to subdue the protean forms of interstate commerce to the diverse interests of society which they supposedly serve.

The power of Congress is a limitation not only upon state powers of regulation but upon those of taxation as well. Apart from the commerce clause a tax may be imposed only upon that portion of an enterprise which can fairly be attributed to the taxing state; various apportionment formulae have been attempted to meet the more general problem of double taxation (*q.v.*). To this territorial limitation the commerce clause adds restrictions where the activities in the state are part of a concatenation transcending the state line. The historic purpose of the commerce clause might have confined this limitation to taxes which discriminated against or "unduly burdened" interstate commerce. Thus the commerce clause prevents the imposition of a higher tax on goods coming from without the state than upon similar goods of local origin. Under the influence, however, of Marshall's dictum that the power to tax is the power to destroy—it awaited Justice Holmes a hundred years later to dispose of it: "The power to tax is not the

power to destroy while this Court sits"—the Supreme Court early declared that the ban extended to any tax, however general its incidence, in so far as it was a tax on interstate commerce. If consistently applied this doctrine would have resulted in pervasive discrimination in favor of interstate commerce at the expense of competing local enterprise. New Jersey, for example, would be forced to confer exemption on merchants who supplied New Jersey buyers with goods from New York warehouses in competition with merchants selling New Jersey goods. Even where the perversities of the doctrine are not so flagrant, it would have deprived the states of an important source of revenue from enterprises which burdened the state and received its benefits. Happily the states were not reduced to so unfortunate a predicament. The prohibition against taxes "on" interstate commerce contained a liberating equivocation. Indeed so effectively was the legal rather than the economic connotation seized upon that for a time the protection of interstate commerce from hampering state taxation threatened to become only a pious profession. The states were allowed to lay a tax on a concededly valid subject—property located or privileges exercised within the state—even though the tax was measured by elements, such as gross receipts from interstate commerce, that would not have been tolerated as subjects of taxation. The legislative legerdemain promoted by this distinction reached its climax in 1908 in a tenuous effort by Texas to distinguish between an invalid tax of 1 percent on the gross receipts of railroad companies and a tax on railroad companies "equal to" 1 percent of their gross receipts. The court shrank from carrying its formal doctrine to the ruthless logic of formalism. The first limits upon an old doctrine are apt to mark the beginning of a long retreat: in an opinion which presaged a new approach to the problem Justice Holmes warned that "neither the state courts nor the legislatures, by giving the tax a particular name or by the use of some form of words, can take away our duty to consider its nature and effect" [*Galveston, H. & S. A. Ry. v. Texas*, 210 U. S. 217, 227 (1908)].

The Supreme Court has not found the duty an easy one. If the adjustment of the claims of state and taxpayer cannot be made by any general formula, neither can it be left to unbridled empiricism on the basis of the amount and burden of the tax in each case. The state must have in advance some reasonable assurance of the permissible incidence of the tax. Moreover to

invoke standards of reasonableness with reference to an individual taxpayer presents a logical solecism; and practically a large tax on an interstate business may be less burdensome, where a similar tax is borne by businesses generally, than a small tax the impact of which is particularly upon interstate commerce. This will explain why although a carrier engaged in both interstate and intrastate commerce may successfully resist a tax levied in part on gross receipts from interstate commerce, it may be required to pay the same amount of taxes under a statute increasing the general tax rate but confined in application to gross receipts from intrastate commerce. The distinction between the taxation of a subject and the use of that subject as a measure of taxation has a real economic significance, in that the subject will indicate in the light of experience and analysis whether the tax will fall disproportionately upon interstate commerce. A broad subject is a reasonable guaranty that the incidence of the tax will be equitable. This has been recognized in decisions upholding a tax on property, even though the property is used in interstate commerce or valued by its connection with that commerce, and a gross receipts tax levied in lieu of a property tax. But in dealing with franchise taxes the court has given the subject of the tax a more formal importance. If applied to a corporation doing solely interstate business the tax has been held invalid, although if the corporation does both interstate and intrastate business the tax may be levied in respect of the latter. The court in sustaining a net income tax, even as applied to income from interstate commerce, based itself frankly on economic considerations; in contrast to the gross receipts tax the net income tax is imposed only if and to the extent that the commerce is profitable, and does not vary directly with the amount of the commerce. Particular importance attaches to the permissible scope of the net income tax in view of the increasing extent to which the states are adopting this form of revenue measure. In short, if the state frames its taxing system wisely, even interstate commerce can be made to pay its share for the support of the states wherein it operates.

An epitome of the whole process of legal adjustments under the commerce clause is presented by the original package doctrine. Although first announced in 1827 (*Brown v. Maryland*, 25 U. S. 419) as a prohibition of state taxation of foreign imports while they remained in their original packages and had not been re-

sold locally, the doctrine was in fact the enforcement of a policy which several states had voluntarily adopted and then abandoned. In *Brown v. Maryland* the tax was discriminatory and was laid upon importers; but the doctrine was uncritically carried over to cases of non-discriminatory treatment of goods from a sister state. In its uncongenial soil the doctrine suffered the fate of unfortunate transplantation. In 1923 it was finally uprooted [*Sonneborn Bros. v. Cureton*, 262 U. S. 506 (1923)]. The states may now levy property or sales taxes on all goods in the original packages except those imported from abroad. In its adopted field of state regulation, however, the original package doctrine evinced a more hardy vitality. After having been disregarded in relation to state prohibition laws it was later applied to them and it continues as a limitation on the exercise of state police power subject to the inroads that have already been noted. A corollary to the original package doctrine may be observed. Just as the state taxing power may lay hold of goods in the state of destination before the state regulatory power may be exercised, so there are indications that the taxing power may operate in advance of the regulatory power in the state of origin of the goods. Federal regulation, finally, may persist in the state of destination even after the original packages have been broken, as in the case of the pure food laws; and federal regulation may apply in the state of origin even before movement of the goods, as in the case of the antitrust laws.

The last fifty years have witnessed an efflorescence of federal authority having its roots in the commerce clause. In considering the extent to which the dominant forces of modern economic society have thereby come under federal control certain tendencies and limitations are suggested. The older forms of transportation and communication have been brought under broad national supervision. The Interstate Commerce Act of 1887, applicable in varying degrees to railroads and their water connections, express and sleeping car companies, pipe lines, telephone, telegraph and cable companies, marks the first step. Subsequent enactments have strengthened federal control and regulated the financial activities of the carriers. The Air Commerce Act of 1926 and the Radio Act of 1927 are recent additions to federal power. A second type of federal commercial legislation enacts prohibitions and penalties like those found in state police power enactments. In this group are the Lottery-Tickets Act of 1895, the Food and Drugs Act of

1906, the Mann Act of 1910, the Dyer Act (automobile larcenies) of 1919, the Packers' and Stockyards Act of 1921, the Grain Futures Act of 1922—this class of enactments, it is manifest, deal with activities closely related to the physical movement of persons or things. A third type of federal control takes its origin in the Sherman Anti-trust Act of 1890. These restrictions upon trade agreements of manufacturers and the tactics of organized labor involve perhaps the most permeating impingement of federal authority on business and industry. Yet even here the courts are guided in applying limitations on activities which are not themselves interstate commerce by a feeling for the "dramatic circumstances" of interstate movement, which in 1905 served to bring the so-called Beef Trust within the proscription of the Sherman Act. The extent to which such activities as corporate organization, finance (apart from national banks), insurance, stock exchanges, will yield to constitutional control by the central government, if the pressure of circumstances should make that desirable, may well depend, so far as lawyers' arguments go, on the extent to which they are dramatically linked to the element of distribution in the complex of commerce.

Pressures more powerful than even the most precise language of constitution framers were bound to weld the loose congeries of the original states into a cohesive centralized nation. To a considerable degree therefore the Supreme Court registers inevitabilities in the political and economic unfolding of the United States. Yet even inevitable development may be eased or retarded by the constitutional channels through which the national life flows. The commerce clause undoubtedly has been utilized as the great centralizing vehicle in the American constitutional scheme. Barring the war power it is the deepest source of the affirmative exertion of national power. The national interest prevails, yet the states are not excluded from dealing with state phases of the nation's commerce. The states may to some extent regulate interstate commerce because they must—always with the power of Congress to gainsay through legislation and the power of the Supreme Court to annul through litigation. And so for a hundred years and more exertions of state authority within the field of interstate commerce have successfully passed the scrutiny of the Supreme Court. Practical necessities and shrewd judgments about practical matters decide the fate of state legislation when challenged by the power or the action of

Congress. State necessities, the fitness of state relief as against nation wide action, the limited manifestations of a given evil or the limited benefits of its correction, the actual interest of the whole country in a phenomenon especially virulent in a particular state, the advantages of local regulation balanced against the cost or inconvenience to interests outside the states—these and like questions are involved in the process by which the Supreme Court in concrete cases has held for or against state and national action in the interacting areas of state and national interests.

Ultimately these are phases of the central problem of the one and the many, which has been the leitmotif of American political and constitutional history. The solution of conflicts in the future as in the past will depend upon the prevailing philosophy of federalism of the Supreme Court justices, reflecting in turn views of American society which judges share with their fellow men. With the growing use of taxation as an instrument of state policy and the development of state schemes for controlled production the questions will become nicer and the adjustments more subtle. If the due process clause does not interdict these "social experiments in the insulated chambers afforded by the several states," the commerce clause remains to admonish that the insulation may have worn too thin. On behalf of the states it will be urged that demands for centralization, although in apparent harmony with the unifying forces of technology, frequently overlook possibilities of cooperative action; that there is a practical limit to effective administrative oversight and judicial control; that in matters not obviously of common national concern the states or at least regions of them have a localized knowledge of details, a concreteness of interest and varieties of social policy which themselves constitute values that it is to the highest interest of the nation to conserve.

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OTHER FEDERAL STATES. The experience of the United States in adjusting the problems of the distribution of powers between the central government and the member states was widely known and carefully studied by many of the individuals responsible for subsequent federal constitutions, but the guidance offered by this experience was variously interpreted. Only Australia, Brazil and Argentina followed the lead

of the United States in confining to interstate commerce the power of the federal government over commerce. The Swiss constitution of 1874 (art. 31) merely guaranteed freedom of commerce and industry throughout the confederation, with certain exceptions including sanitary police measures and provisions relative to the practise of commercial and industrial pursuits. Other federations gave the central government control of all trade and commerce. The Reich under the constitution of 1871 had general control of commerce and trade where uniformity was essential but the administration and the details of legislation were the province of the *Länder*. Under the constitution of 1919 federal powers over both legislation and administration were increased. The Austrian constitution of 1920 gave powers both of legislation and of administration in respect to commerce and industry to the federal government, declared the federal territory a uniform economic zone and prohibited any hindrances on interstate or internal trade. Mexico in its constitution of 1917 gave the central government power to prevent restrictions on interstate commerce and to regulate for the entire republic in all matters relating to mining, commerce and institutions of credit (art. 73). In these countries the problem was essentially one of determining the limits between these broad powers over commerce and the powers specifically granted or impliedly reserved to the states.

The British North American Act of 1867 establishing the constitution for the Dominion of Canada also gave to the federal government exclusive control over commerce and trade (art. 91, sect. 2) as well as the power to legislate for the peace, order and good government of the dominion and to regulate the railways. The intention was quite evidently to profit by the difficulties of the United States by giving to the central government ample powers over commerce. In *Citizens Insurance Co. v. Parsons* [7 App. Cas. 96 (1881)], however, the Judicial Committee of the Privy Council found it necessary to restrict the literal meaning of the words "regulation of trade and commerce" in order to afford scope for the powers granted exclusively to the provincial legislatures in article 92, among them the powers to legislate on municipal institutions, property and civil rights and matters of a merely local or private nature and to raise provincial revenue by direct taxes and by shop, saloon, auctioneer and other licenses. The committee suggested that the clause might include

political arrangements in regard to trade which require the sanction of Parliament and also the regulation of trade in matters of interprovincial concern and perhaps the general regulation of trade affecting the whole dominion. It could not, it held, extend to the regulation by legislation of the contracts of a particular trade or business, such as fire insurance, in a single province. The court expressly abstained from defining the exact limits of the dominion power, leaving its determination to particular cases. In accordance with this policy of interpreting narrowly and strictly the nature of the powers granted to the dominion the Privy Council has upheld the right of various provinces to require licenses for the sale of liquor, to levy direct taxes on banks and insurance companies and to pass various measures of local police power which affect particular trades. By a process of judicial interpretation exactly the reverse of that adopted in the United States the Privy Council and the Supreme Court of Canada have reduced the power of the central government over trade and commerce to the point where, in view of the increased power over commerce gained by the United States Congress through judicial interpretation, the central powers over commerce in the two countries have become much more alike than seemed possible in 1867.

Next to the United States, Australia is the country in which the regulation of interstate commerce has presented the greatest legal and economic problems. The commerce clause (sect. 51, sub. 1) of the Australian constitution was framed in direct imitation of the American, giving the commonwealth power to make laws with respect to "trade and commerce with other countries and among the states." This section was clarified, extended and modified by certain other sections of the constitution. Federal control was definitely indicated as extending to navigation, shipping and state owned railways (sect. 98). Parliament was given the power to prohibit any undue, unreasonable or unjust preference or discrimination in railway rates as between one state and another (sect. 102). The states were forbidden to levy customs duties (sect. 90) or to impede interstate free trade (sect. 92), but they could levy inspection charges (sect. 112) and legislate with regard to intoxicants (sect. 113). The states were guaranteed against any action by the federal government favoring one state as against another (sect. 99) or abridging the rights either of states or of residents thereof to a reasonable use of the waters of

the rivers for conservation or irrigation (sect. 100). In a measure these detailed provisions represented an attempt to settle by constitutional provisions certain questions which in the United States had been settled by judicial decisions or by subsequent legislation. Of the latter nature was especially the provision (sect. 101) creating an Inter-State Commission "to be appointed by the Federal Parliament with such powers of adjudication and administration as Parliament deems necessary for the execution and maintenance within the Commonwealth of the provisions of this constitution with regard to trade and commerce and all the laws made thereunder." The commission never came to occupy its intended position in the governmental system; it became moribund after the Privy Council denied it the right to exercise the judicial powers granted it under the Inter-State Commission Act of 1912 [*New South Wales v. Commission*, (1915) 20 C. L. R. 54].

In interpreting the scope and meaning of the Australian commerce clause judges and constitutional lawyers have drawn heavily upon American experience. The question of what is commerce has been generally decided along lines following American precedents [*W. and A. McArthur Ltd. v. State of Queensland*, (1920) 28 C. L. R. 530]. The power over commerce granted to the federal government has been held not to apply to matters, such as conditions of employment, of which the effect upon trade and commerce is not "direct, substantial and proximate" [*Federated Amalgamated Government Ry. etc. Assn. v. New South Wales Ry. Traffic Employees' Assn.*, (1906) 4 C. L. R. 488]. The Australian Industries Preservation Act of 1906, intended like the Sherman Act to prevent monopoly and restraint of trade as well as unfair competition, has been held unconstitutional except in so far as it referred to trade or commerce with other countries or among the states [*Huddart Parker & Co., Pty., Ltd. v. Moorehead*, (1908) 8 C. L. R. 330]. The federal power over shipping and navigation has been held applicable only to overseas or interstate shipping, on the principle that the specific constitutional provision does not enlarge the territorial jurisdiction defined in section 51, subsection 1 [*Owners of SS. Kalibia v. Wilson*, (1910) 11 C. L. R. 689]. States have been denied the right to impose discriminatory burdens upon products of other states [*Fox v. Robbins*, (1908) 8 C. L. R. 115]. Until 1920 the doctrine of reserved powers—that the grant of power over interstate commerce

to the commonwealth reserved all regulation of intrastate trade to the states—had been applied in a number of cases to invalidate commonwealth acts. In that year in the Engineers' Case (28 C. L. R. 129) the High Court repudiated the doctrine and conceded to the commonwealth the right to regulate intrastate trade if that regulation was essentially involved in the exercise of any federal power. Despite this concession the feeling is strong in Australia that the powers of the commonwealth over commerce are inadequate. Three attempts to transfer to the commonwealth all power over commerce succeeded to the extent of passing both houses of Parliament but failed to secure the necessary vote in the popular referenda.

Argentina (art. 67, sect. 12) and Brazil (art. 34, sect. 5) also copied very closely the commerce clause of the United States constitution. The former by implication also adopted established American jurisprudence on the clause except in so far as peculiar conditions necessitated changes [*in re Lino de la Torre*, (1877) 19 S. C. N. 231]. In both Argentina and Brazil, however, the power of the central government was tremendously increased by certain general grants of power which have rendered more or less academic the question of the exact limits of federal power under the commerce clause. Thus the Argentine constitution (art. 67, sect. 16) gives the Congress power to provide for "all that conduces to the prosperity of the country, to the advancement and welfare of all the provinces"—powers so broad as to give the Congress complete control over the industrial development of the country. Similarly among the concurrent powers of the Brazilian Congress is the power "to encourage in the nation the development of letters, arts and sciences, as well as immigration, agriculture, industry and commerce without privileges that might hinder the action of the local governments" (art. 35, sect. 2). Interstate commercial relations in Brazil are complicated by the right of the individual states to levy export duties (art. 9, sect. 1) and under certain conditions import duties (art. 9, sect. 3). In 1896 the court declared export duties levied on products going to other states unconstitutional but reversed its position the following year in accordance with legislation passed by Congress. Two subsequent reversals by the court have left such export duties constitutional. Since the constitution specifically gives to the central government the right to levy import duties only on foreign goods, the states claimed the right to levy import

## Interstate Commerce — Interstate Commerce Commission 229

duties on goods from other states but the Supreme Court has repeatedly held such levies unconstitutional. The extent of state powers with respect to the levy of import duties was finally clarified and regulated by federal law in 1904.

The trend toward centralization of control over commerce in the federal state would seem to be clear from the foregoing analysis of the types of arrangements for the regulation of commerce prevailing in the various federal states. Succeeding federations have shown in their constitutions a tendency to accord to the central government more power over commerce than the fathers of the United States constitution were willing to grant in 1787. That grant itself has been tremendously expanded by the Supreme Court in response essentially to the demands of an expanding technique and scale of commercial relations. It is significant that in Australia which followed most closely the original scheme of apportionment set out in the United States constitution the dissatisfaction with this provision in particular and with federalism in general is very strong. Canada alone seems not to conform to this general centralizing trend in control over commerce, but Canada's experience must be interpreted in the light of the constitution's relatively liberal grant of power to the central government. Increasing economic integration within the various federal states has resulted in such increasing central control that the problem of interstate commercial relations has everywhere, except perhaps in the United States and possibly in Australia, become far less important than that of surmounting or somehow eliminating the barriers to international trade.

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See: FEDERATION; CENTRALIZATION; CONSTITUTIONAL LAW; JUDICIAL REVIEW; STATES' RIGHTS; POLICE POWER; SUPREME COURT, UNITED STATES; INTERSTATE COMMERCE COMMISSION; FEDERAL TRADE COMMISSION; RAILROADS; TRUSTS; FOREIGN CORPORATIONS; HOLDING COMPANIES, section on UNITED STATES; LIQUOR TRAFFIC; FOOD AND DRUG REGULATION; LABOR LEGISLATION AND LAW; UNIFORM LEGISLATION; COMPACTS, INTERSTATE.

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INTERSTATE COMMERCE COMMISSION. This federal administrative tribunal is unquestionably the leading governmental agency of economic control in the United States. Through its sweeping authority over the transportation of persons and property, especially by rail, it not only imposes extensive restrictions upon freedom of enterprise but exerts a dominant measure of positive control over both individual transportation agencies and the transportation system as a whole. In the exercise of this authority moreover there is a marked departure from traditional legal processes. Although the commission is a federal tribunal its most significant powers extend in practise to intrastate as well as interstate commerce; although it is an



administrative agency it continually adjusts controversies and prescribes courses of future action; despite the exercise of these judicial and legislative functions it institutes criminal proceedings and penalty suits, and it moves on its own initiative as well as in response to complaints and applications. Its regulatory activity in execution of vast grants of discretionary authority results in a series of governmental acts which, while subject to modification by the administrative tribunal itself, constitute for the most part conclusive determinations. The commission's performance on this basis is exerting an increasingly potent influence upon the status of the railroads and of the other carriers subject to its jurisdiction; and its administrative experience is providing a rich background for fashioning the character of other agencies of control, state as well as federal, particularly in the field of the so-called public service industries.

The commission's prevailing position, as influenced in large measure by the weight of its own informed recommendations, is the outcome of a course of development, legislative and judicial, extending over a period of more than four decades.

The original Act to Regulate Commerce, under which the commission was established in 1887, was a mere beginning. Because the states had been held to be without constitutional authority to regulate interstate railroad rates, even in the absence of congressional action, and in view of the growing predominance of interstate traffic, the federal government entered upon the tasks of control; because continuous supervision, impartial investigation and flexible adjustment of carrier-public relations were deemed to be imperative for effective control, resort was had to administrative regulation. The widespread prevalence of discriminatory adjustments was the most influential cause of the adoption of this federal legislation, just as the outcry against extortionate charges had lent primary impetus to the enactment of the earlier granger legislation by the states. The act of 1887 was designed principally to prevent unreasonable and discriminatory rates and practices; the provisions prohibiting pooling, requiring publicity of operations, dealing with accounts and reports and endowing the commission with investigatory power were calculated to facilitate the achievement of these main purposes. But serious difficulties progressively emerged which rendered this original legislation an inadequate basis for the commission's exercise of control.

Through reliance upon constitutional protection against self-incrimination unwilling witnesses withheld essential testimony from the commission; as a result of the procedure provided for the enforcement of administrative orders—whereby the commission was charged with the burden of securing compliance with its findings through judicial processes and these findings were to serve only as *prima facie* evidence of the facts—the adjustment of controversies was long delayed, and by considering proceedings *de novo* the courts tended to exercise a dominant influence in their disposition; because of restrictive judicial interpretations of some of the basic provisions of the act—those relied upon especially to prescribe future rates and to eliminate alleged long-and-short-haul violations—the commission found itself without adequate substantive power to mold on any positive basis the relationships which should subsist between the railroads and the public.

During much of the first two decades of the commission's existence therefore the need of bolstering up its position in various directions, both procedurally and substantively, was repeatedly brought to the attention of Congress. Part of the response manifested itself in the passage of the Compulsory Testimony Act of 1893 and the Expediting Act of 1903 for the more effective exercise of existing governmental authority; in the adoption of the Elkins Act of 1903, largely under pressure of the railroads themselves, for the prevention of departures from the published tariffs and the elimination of personal preferences; and as a parallel development, for the protection of persons and property, in the enactment of safety legislation. Not, however, until the passage of the Hepburn Act of 1906 under the vigorous leadership of President Roosevelt was the commission vested with reasonably adequate powers of regulation. By that legislation in recognition of the organic unity of the transportation function the jurisdiction of the commission was extended to a group of carriers other than railroads; the scope of railroad transportation subject to control was expanded to embrace auxiliary services and facilities, such as those provided by private car owners and industrial railroads and tap lines; the commission's authority over accounts and reports was strengthened by the sanction of penalties and by the right of access to and examination of the records of the carriers; above all, power was expressly conferred upon the commission to prescribe rates and practises for the future in lieu

of those found to be unreasonable or discriminatory, and the enforcement procedure was so changed that the commission's orders were made binding by their own terms with the support of heavy penalties, and the burden of testing their validity in the courts was shifted to the carriers. On this basis the commission came to exercise positive control over railroads and other carriers, and with the consequent narrowing of the scope of judicial review the method of administrative regulation came to dominate the field.

But administrative experience disclosed additional difficulties from time to time, necessitating further modification and expansion of the legislative structure. The first group of significant provisions was embodied in the Mann-Elkins Act of 1910. It rehabilitated the long-and-short-haul clause, so that relief from its prohibitions was made dependent upon the discretionary authority of the commission; it conferred power to suspend changes in rates, so that the commission might enter upon the regulatory process before the proposed rates became operative; it established a Commerce Court as a means of securing speedier, more uniform and more expert judicial determinations. Although the Commerce Court was abolished less than three years later, even this aspect of the 1910 legislation exerted a permanent influence upon the commission's status, since the most significant controversies during that short period concerned the lawful scope of judicial review and these controversies were almost uniformly resolved by the Supreme Court in support of the commission. Basically indeed the tendency of the Commerce Court to encroach upon the legitimate sphere of administrative power was responsible for the transfer of its jurisdiction to the district courts. The other important provisions of the Mann-Elkins Act not only resulted in a direct enhancement of the commission's authority but contributed to the enactment of further substantive legislation. While the new fourth section made possible far reaching curtailment of long-and-short-haul violations, particularly in southern and western territory, its application also emphasized the close interrelations between rail and water transport. Accordingly under the Panama Canal Act of 1912 provision was made for the dissociation of competing rail lines and water carriers, the commission to determine the existence or possibility of competition, and the commission's authority over joint rail and water carriage was extended in various directions. Similarly, while the rate suspension power was immediately uti-

lized in comprehensive proceedings as a means of preventing proposed advances in railroad charges, its application also emphasized the absence of reliable data of capital investment and property values. Accordingly under the Valuation Act of 1913 the commission was directed, although with little guidance as to controlling standards, to make valuations of the carriers' properties and to keep these valuations up to date—to initiate a vast research undertaking, which after almost two decades of investigation is not yet completed (*see VALUATION*).

But the commission's authority was to be still further developed in highly significant directions. In the decade after 1910 railroad facilities proved increasingly inadequate to meet growing transportation needs. Impaired railroad credit, which was widely recognized as the immediate cause of difficulty, was generally ascribed on the one hand to financial malpractices by important carriers and on the other to restrictive rate decisions by the commission. Both factors were doubtless operative in some measure, and they were alike grounded in the negative approach which had thus far characterized the development of the Act to Regulate Commerce. Restraint upon specific abuses, principally rate maladjustments, had been the chief objective of legislative policy; no affirmative responsibility had been imposed upon the commission so to utilize the regulatory process as to maintain and develop an adequate transportation system. This was evidenced by the lack of statutory guidance in the matter of fair return and by the absence of federal regulation of security issues; it was reflected too in the insistence upon maintenance of competition, in the statutory silence with regard to conflicts between state and federal authority, in the neglect of direct control over service and facilities. All these legislative defects contributed to the rapidly emerging transportation difficulties, which in turn were dramatically accentuated by the unprecedented traffic demands of the World War. Government operation of the railroad properties became inevitable during the period of this emergency, and the twenty-six months of federal control (January 1, 1918, to March 1, 1920) not only emphasized the fruitfulness of recognizing the unity of the national transportation system but afforded an opportunity for recasting the regulatory scheme in terms of such recognition. The roads were returned to their private owners under a system of regulation broadly reconstituted on an affirmative basis, in which the railroads of the country

were placed under "the fostering guardianship and control" of the commission.

The Transportation Act of 1920 involved many "new departures" from traditional legislative policy. In the field of rates and charges the commission's authority was expressly extended for the first time to matters of financial return, with emphasis upon the support of carrier credit and the maintenance of an adequate transportation system. This is evidenced by the statutory rule of rate making requiring under honest, efficient and economical management and reasonable expenditures for maintenance a fair return on the fair value of the railroad properties as a whole or in groups; by the recapture clause providing for the disposition and use of the earnings of individual carriers in excess of a fair return; by the requirement that joint rates be apportioned among participating carriers in furtherance of the public interest; by the express recognition of federal authority over intrastate rates found to be discriminatory against interstate commerce. With like ends in view the commission's directing powers were extended to the control of service practises, culminating in the extraordinary authority to order acquisition of facilities and extension of lines and under emergency conditions to direct the pooling of equipment, the common use of terminals, the establishment of priorities, the rerouting of traffic. Finally, an important group of enabling powers, to be exercised upon application of the carriers, extended the commission's dominant influence into the sphere of finance and management. New construction and abandonment of lines were made to depend upon its issuance of certificates of public convenience and necessity; the pooling of traffic or of revenue by competing railroads, the acquisition of control of one carrier by another through lease or stock ownership and the actual consolidation of railroad properties were made subject to its approval; the issuance of securities and the assumption of obligations were made dependent upon its authorization. While legislative policy on this basis was deemed to constitute a more intelligent and more constructive adjustment of relationships between the railroads and the public than had theretofore prevailed, the scope of the commission's powers was radically expanded thereby.

The sweep of the commission's control of economic adjustments appears not only in the wide range of substantive powers exercised over the railroads but in the variety of the types of carrier subject to its jurisdiction. While railroad

transportation was from the beginning and still remains the chief field of the commission's regulatory activity, the scope of its control now includes water lines under prescribed conditions as well as express companies, sleeping car companies, pipe lines employed in the transportation of oil or other commodities (except water and gas) and telephone, telegraph and cable companies. The actual assertion of authority over some of these carriers has been rather narrowly restricted; but there has been an increasing recognition of the intimate interrelationships, competitive and otherwise, which prevail between the various transportation agencies and of the need of still further extension of the commission's jurisdiction, particularly over water lines and motor carriers, if the primary tasks of railroad regulation are to be executed wisely and effectively and if necessary coordination in the transportation field as a whole is to be measurably achieved.

Although the commission's authority is expressly declared to be inapplicable to the transportation of passengers and property wholly within one state, its functioning jurisdiction embraces such control of intrastate commerce as is essential to the effective control of interstate commerce. This development is grounded, first, in the fact that identical instrumentalities simultaneously serve both types of commerce and, second, in the controlling circumstance that commercial enterprise does not accommodate itself to the artificial political lines which separate the states. Under these conditions the commission's regulatory activities normally comprehend many matters which are primarily of local concern. The prescribed accounting classifications and the required reports cover all traffic; the service regulations are applicable to the entire supply of facilities and the entire flow of commerce; the certificates of convenience and necessity generally embrace lines located or to be located wholly within one state and intrastate as well as interstate service; the issuance of securities by interstate carriers, even when the proceeds are to be used exclusively for intrastate facilities, is conditioned upon federal authorization and cannot be validated by state action; carrier combinations are generally dependent upon federal approval, and such approval exempts them from the restrictions of state law; state made rates which are found to be discriminatory against interstate commerce, whether because of the prejudicial effect of rate disparities upon specific persons and places or because of the

general financial burden imposed thereby upon the transportation system, are subject to the commission's direct control. Under the influence of congressional enactments, as interpreted by the courts, the powers of the states have become increasingly attenuated in this field.

But despite this centralization of authority the commission has tended to steer a statesmanlike course in dealing with state and federal relations: without subordinating dominant national interests it has largely avoided undue encroachment upon the legitimate sphere of local control. Only in the initial enforcement of the affirmative rate policy introduced by the 1920 legislation did it virtually occupy the entire field, with seemingly unnecessary disregard of the economic and governmental interests of the states. In due course by way of response to judicial dicta and to the lessons of more mature administrative experience a commendable spirit of restraint came to characterize its adjustment of jurisdictional issues. Only substantial disparities in charges which operate "as a real discrimination against, and obstruction to, interstate commerce" are now held to justify the assertion of federal authority; and even in such cases reliance is regularly placed upon the state commissions, in the first instance, for the removal of the maladjustments. A cooperative procedure following express statutory provisions has facilitated these developments. Due notice is given to the state authorities of all proceedings involving matters of intrastate concern, so that local representations may be made and cooperative action arranged; joint hearings and joint conferences are held in most such proceedings, so that on the basis of a common record and free discussion conflicting views may be harmonized and divergent results avoided; the facilities and services of the state commissions are frequently utilized by the federal agency as media of investigation and administration. While ultimate authority resides in the federal tribunal, this system of cooperation, voluntarily fashioned by agreement between the Interstate Commerce Commission and the National Association of Railroad and Utilities Commissioners, is achieving notable practical results—in removing maladjustments, in averting conflicts, in reducing to a minimum the necessity for direct federal action in matters primarily of state concern.

Perhaps the commission's outstanding characteristic as an agency of control lies in the vast scope of its administrative discretion. In the performance of its mixed functions it is not only

virtually unhampered by procedural restrictions but free to mold its substantive determinations in such directions and by such processes as in its informed judgment will best serve public ends. Despite the elaborate character of the legislation under which it operates, the guiding standards prescribed by Congress are usually so general that a continual stream of policy making administrative decisions is necessary to translate these general standards into concrete arrangements. The just and reasonable rates and practices which the commission seeks to maintain and develop are based upon the facts and circumstances of each proceeding, in the light of constantly changing conditions in both industry and transportation; and a like approach characterizes its disposition, in furtherance of the public interest, of the numerous and varied applications for approval of proposed courses of action in the newer field of finance and management. Although a body of controlling principles has been progressively developed in all phases of the commission's tasks, pragmatic considerations tend to dominate the course of administrative performance. Precedent often plays but a minor role; future needs are nicely balanced against the claims of vested interests and the pressure of established relations; typical data are frequently accepted as providing sufficient support for comprehensive findings; provisional orders are issued when calculated to achieve major public ends; experimental adjustments are encouraged; few obstacles are interposed to the rehearing of complaints and the reopening of proceedings; emphasis is directed to the achievement of flexibility of relations through continuity of control.

Furthermore this broad exercise of discretion is virtually free from external limitations imposed by the courts. Through a self-denying interpretation of basic statute the courts have sharply narrowed the scope of judicial review in recognition of the general intent of Congress to constitute the commission the dominant agency of control. In most matters involving alleged violations of the Interstate Commerce Act preliminary resort must be had to the commission in order that uniformity of results molded by expert judgment may be adequately safeguarded; denials by the commission of the relief sought are held to be beyond the reviewing powers of the courts, in order that the discretion of the courts may not be substituted for that of the commission; and upon the commission's assumption of primary jurisdiction and its issuance of affirmative orders the grounds of judicial cen-

sorship tend to be confined essentially to the single issue as to whether the exerted powers could be and were in fact vested in the commission. The commission's acts may be invalidated because they infringe upon constitutional limitations, because they exceed the scope of statutory authority, because as a result of want of evidence or mistake of law they involve arbitrary action or abuse of discretion. Even in these terms there is no extensive judicial interference with the commission's findings and orders. Despite the far reaching expansion of regulatory processes there has been an almost complete absence of proceedings in which either the underlying legislative provisions or the administrative decisions have been invalidated on constitutional grounds. There have been frequent disagreements between the commission and the courts in matters of statutory interpretation, but the gaps left by such judicial curtailment of administrative authority have generally been filled in due course by amendatory or supplementary legislation; and while censorship for mistakes of law broadly conceived has afforded numerous opportunities for judicial encroachment upon administrative judgment, it has almost invariably been restricted in the maturity of the commission's status to the maintenance of basic procedural safeguards and to the enforcement of legal principles of general applicability. The Supreme Court's approach in connection with the valuation controversy—notably in the famous *O'Fallon* case [*St. Louis and O'Fallon Railway Co. v. United States*, 279 U. S. 461 (1929)]—seems to constitute a striking exception to the general doctrine that the commission's determinations when supported by evidence and within the lawful scope of its delegated power are free from judicial interference; but even in this proceeding the adverse decision of the majority of the court was professedly based upon the commission's mistaken construction of the relevant statutory provisions, in the light of principles deemed to have been established in previous valuation cases with regard to the consideration to be given to current reproduction costs. It has been repeatedly affirmed that issues of fact, primary or ultimate, which necessarily involve the exercise of discretion, are subject to conclusive settlement by the primary tribunal. The courts do not pass upon the weight of the evidence, nor do they render independent judgment upon the wisdom or expediency of the policies and practices sought to be enforced. The commission is recognized as the tribunal "appointed by law" and "informed

by experience" to which the tasks of regulation have been committed, the courts merely providing negative safeguards against abuse of power.

The accumulation of regulatory tasks and the expansion of administrative responsibilities have resulted in important developments in organization and procedure. The commission's original membership of five has been increased through successive amendments to eleven, and the commission has been authorized to act through subdivisions of this membership, the decisions of which, subject to ultimate control by the entire body through rehearing, possess the same effect as those of the commission. The staff has grown from less than a dozen to about two thousand, and expenditures from somewhat less than \$100,000 during the first full year of the commission's existence to more than \$8,000,000 for 1930. There have been many reorganizations of the internal mechanism of administration; the bureaus of the commission, which not only perform routine tasks but participate intimately in the processes of regulation, now include those of formal cases, informal cases, traffic, valuation, finance, law, inquiry (prosecutions), service, safety, locomotive inspection, accounts and statistics. Originally the commissioners personally examined complaints, held hearings, conducted investigations, prepared reports, rendered decisions, issued orders. These duties are now largely performed, at least in the first instance, by attorney examiners and other subordinate employees; but by pursuing a liberal practice in permitting oral argument before divisions or the entire body and in authorizing the reopening of proceedings and the rehearing of complaints as well as through a carefully developed system of internal conference and co-operation the commission has encountered no insurmountable obstacles to fashioning harmonious policies, attaining reasonably uniform results, assuming informed responsibility for findings and orders. Nevertheless, the extent and diversity of the commission's tasks have given rise to serious problems of administrative pressure. The commission is probably the most overworked body in the entire governmental establishment, and it is becoming increasingly difficult to maintain its various activities on a measurably current basis. Procedural experiments involving the voluntary elimination or curtailment of formal hearings have tended to afford some relief; further improvement would doubtless result from increased appropriations, especially for additional examiners to handle

formal cases, and also perhaps from the delegation of authority under proper safeguards to individual commissioners and specified employees as recommended by the commission. But more drastic expedients—the establishment of independent or subordinate regional commissions, the creation of parallel regulatory tribunals in the sphere of finance broadly conceived, the organization of a cabinet department of transportation to exercise general administrative supervision over the railroad system—have been proposed from time to time. While the organic character of the regulatory process and the high quality of the commission's performance tend to cast doubt upon the wisdom or feasibility of most such proposals, the suggestions direct attention to practical aspects of the increasingly important issue of administrative effectiveness.

The commission is called upon to accommodate such numerous and far reaching conflicts of interest that its decisions frequently elicit criticism and disapproval, but it is a matter of general agreement that its functions are indispensable and the services which it renders highly salutary. Its vast powers are usually exercised with admirable restraint, and it accords dominant influence to the complex realities of the situations with which it deals. Without attempting to reconstitute the railroad industry on any uniform basis of abstract principle, the commission is none the less constantly safeguarding the interests of the public in a great variety of directions; and at the same time it is not unmindful of the legitimate claims of the railroad owners and is protecting the carriers themselves against the excesses of competitive practise and the mistakes of corporate self-seeking. With the increasingly extensive inroads upon railroad traffic by motor trucks, buses, water carriers and pipe lines it has become essential that the commission direct itself to the outstanding task of effecting a proper coordination of the various carrying agencies. The commission's recommendations for added statutory authority in this sphere will doubtless come to fruition in due course; and much may also be gained from its proposals for repeal of the recapture provisions and for modification of the rule of rate making as well as from progress under its supervision in the actual accomplishment of railroad consolidations. In face of these large responsibilities, however, it is of crucial importance that the commission's administrative independence be jealously maintained. Executive or legislative interference tends to substitute political power for informed and disinterested

judgment. In recent years such interference has not been altogether absent. On the executive side there has been some manipulation of the powers of appointment and confirmation under pressure of disgruntled litigants and in general furtherance of political ends; and on the legislative side there has emerged a tendency to resort to direct congressional action, as through the largely futile Hoch-Smith Resolution of 1925 for according relief to agriculture, in similar response to dissatisfaction with the commission's orderly determinations. Such developments have not hitherto involved serious consequences but they tend to undermine administrative responsibility, to distort the closely integrated system of regulation, to drag into the political arena complicated technical questions which can be settled properly only through patient inquiry and expert judgment. Freedom as well as power is essential to the satisfactory performance of the commission's important labors.

I. L. SHARFMAN

*See.* INTERSTATE COMMERCE; COMMISSIONS, COURTS, ADMINISTRATIVE; ADMINISTRATIVE LAW, DELEGATION OF POWERS, GOVERNMENT REGULATION OF INDUSTRY, MONOPOLY; PUBLIC UTILITIES, RAILROADS; RATE REGULATION, VALUATION, FAIR RETURN.

*Consult:* Sharfman, I. L., *The Interstate Commerce Commission, a Study in Administrative Law and Procedure*, vols. 1-11 (New York 1931- ); Hines, Walker D., *The Interstate Commerce Commission* (New York 1930); Bernhardt, Joshua, *The Interstate Commerce Commission. Its History, Activities and Organization* (Baltimore 1923); Dickinson, John, *Administrative Justice and the Supremacy of Law in the United States* (Cambridge, Mass. 1927); Freund, Ernst, and others, *The Growth of American Administrative Law* (St. Louis 1923); Ripley, William Z., *Railroads' Rates and Regulation* (New York 1912), and *Railroads' Finance and Organization* (New York 1915); Dixon, Frank H., *Railroads and Government, Their Relations in the United States 1910-21* (New York 1922); Locklin, D. P., *Railroad Regulation since 1920* (New York 1928), and Supplement (New York 1931); Vanderblue, Homer B., and Burgess, Kenneth F., *Railroads, Rates—Service—Management* (New York 1923); Hammond, M. B., *Railway Rate Theories of the Interstate Commerce Commission* (Cambridge, Mass. 1911); Locklin, D. P., *Regulation of Security Issues by the Interstate Commerce Commission* (Urbana 1927); Frederick, John H., Hypps, Frank T., and Herring, James M., *Regulation of Railroad Finance* (New York 1930); Simpson, Sidney P., "The Interstate Commerce Commission and Railroad Consolidation" in *Harvard Law Review*, vol. xliii (1929-30) 192-250; Hartman, Harleigh H., *Procedure and Proof before the Interstate Commerce Commission in Rate and Allied Cases* (Washington 1925). See also the following publications of the United States, Interstate Commerce Commission, *Interstate Commerce Acts Annotated*, prepared by and under the direction of Clyde B. Aitchison,

79th Cong., 1st sess., Senate Document, no. 166, 5 vols. (1930), and *Annual Reports*, vols. i-xlv (1887-1931), and *Reports and Decisions*, vols. i-clxxi, including *Finance Reports* and *Valuation Reports*, the more recent volumes of the latter being in a separately numbered series (1887-1931).

#### INTERSTATE COMPACTS. *See* COMPACTS, INTERSTATE.

**INTERVENTION.** Intervention, in international law, occurs where one state interferes by force or the threat of force in the affairs of another state. It may be directed, as was the case during the earlier history of the practise, against a recognized member of the family of nations or, as has happened on numerous occasions during the more recent period of planned colonial expansion, against an outlying state with a less advanced civilization (*see* PROTECTORATE).

As a technical term the word is of comparatively modern origin, but the idea comprised in it may be traced back to E. de Vattel, the Swiss jurist, whose *Droit des gens* was first published in 1758 (2 vols., Leyden). He laid down the general rule of state independence that every state has the right to govern itself as it thinks fit, adding the corollary that no foreign power has a right to interfere with a state apart from friendly help unless it is asked to do so or unless prompted by special reasons. Vattel's frequent repetition of this corollary was no idle tautology. The notion that states were independent was recognized in theory, but in the European practise of that age little attention was paid to it by the more powerful states when it did not suit their purpose. From the Peace of Utrecht in 1713 to the Treaty of Vienna in 1815 there were events which might justify serious speculation as to whether rules of common morality applied as between states. Even while Vattel wrote, Frederick II's plunder of Silesia in direct contravention of his father's guaranty must have been fresh in his memory. The very king in whose diplomatic service Vattel was employed, Augustus III of Saxony, had been forced as a ruler upon the Polish nation by the arms of Russia and Saxony.

The writers on international law who succeeded Vattel forged and welded the materials scattered throughout his book into a more compact form, but it was some time before "interference" was insulated as a substantive branch of international law and longer still before it acquired "intervention" as a technical name. This hardened as a distinctive term during a period extending roughly from 1817 to 1830. The

reason for its swift evolution during this period is paradoxical. The gross infractions of state independence were so numerous that jurists were forced to give the topic of intervention, whether justifiable or otherwise, an increasing amount of attention. Within the brief span of the twelve years between 1820 and 1832 the Holy Alliance exploited its principles of interference in Naples and Spain, Greece and Belgium became independent states by the intervention of foreign states and French and Austrian interventions balanced one another in Italy. English historians have been inclined to regard Castlereagh's circular dispatch of 1821 as the *locus classicus* on non-intervention; yet it was Castlereagh who dispatched a British fleet in 1814 to punish the Norwegians because they refused subjection to a Swedish king.

Even in current international law intervention has a perplexing vagueness of meaning, but three tolerably distinct varieties are noticeable. The commonest type, the type which has been discussed in the above historical sketch, is internal intervention, or interference by one state between disputant sections of the community in another state, the matter of dispute being usually but not invariably some constitutional change. Since state independence is the foundation of modern international law, non-intervention is now the rule and intervention the exception. It took some time to establish this fact, but for the last century it has been generally recognized as prevailing within the family of nations. Internal intervention when it occurs is directed against abnormal conditions resulting from internal strife, and as a general rule the expectant treatment of non-intervention has come to be preferred to the surgery of intervention.

A second type of intervention so-called consists in punitive measures adopted by one state against another to enforce the observance of treaty engagements or the redress of illegal wrongs. Such interventions occurred with considerable frequency throughout the nineteenth century, as, for example, the blockade by France in 1838 of the coast of Argentina on the ground of the alleged ill treatment of French subjects by the local government; the warlike expedition sent jointly by England, France and Spain in 1861 to compel Mexico to make compensation for injuries inflicted upon resident foreigners in Mexico and upon their property; the English embargo on Greek shipping in 1850 as a means of redressing the wrongs suffered by Don Pacifico and other British subjects; the naval expeditions

dispatched against Korea in 1866 by France and the United States to punish in the one case the murder of a French apostolic vicar and in the other the destruction of an American vessel and the massacre of its crew. The plea of protection of nationals and national property in backward areas as well as the collection of debts has often been advanced, especially in more recent times, as justification for forceful interference by an imperialistic power, notably by the United States in the Caribbean and Central American areas. All such proceedings are essentially measures of redress falling short of war and might more properly be referred to that branch of international law under some such subhead as reprisals, embargo or pacific blockade. They would not have been styled interventions but for the capricious application of that term; and confusion ensues from singling out certain pacific blockades as interventions. It is possible for punitive intervention to be closely followed by internal intervention, as happened in the proceedings instituted by England, France and Spain in 1861 to secure redress for injuries inflicted by Mexico; in spite of the protest and withdrawal of the other two powers France proceeded beyond the original aim and attempted to coerce Mexico in its choice of internal governments.

A third type of intervention, usually referred to as external intervention, consists in interference by one state in the relations—usually the hostile relations—of other states without the consent of the latter. The great majority of such interventions have had as their aim the promotion or settlement of a war between the states interfered with. It might be said that until quite recently the cardinal difference between internal and external intervention lies in the fact that while the causes which justify the former are within the province of international law, those which lead to the latter are outside its scope, however appropriate their discussion may be to the sphere of morals. For external intervention usually involves participation by the intervener in a war, and modern international law does not profess to classify the causes of war as just or unjust. But since the institution of the League of Nations in 1919 this doctrine has been seriously modified. Article 11 of the Covenant of the League declares that any war or threat of war, whether immediately affecting any members of the League or not, is a matter of concern to the whole League, which shall take any action that may be deemed wise and effectual to safeguard

the peace of nations; and not only are elaborate provisions made in other articles for the settlement of disputes between member states but certain topics are expressly specified as generally suitable for arbitration. It is true that the Covenant, like other treaties, is binding only on those states which have acceded to it, but these are so numerous and powerful that it is difficult to say that the causes of war are still a matter of indifference to international law. Consequently every war, whether it originates as an external intervention or not, must since 1919 be regarded as a matter of interest to international law, although there is as yet no genuine prospect of a reversion to the attempts of eighteenth century jurists to catalogue the causes of war as just or unjust.

Since all three forms of intervention involve force or the threat of force, the question is raised as to the difference between intervention and war. This is found to lie not in the acts of the parties but in the intention of one of them. The intervening state in spite of the hostile character of its conduct and of its recognition as such by the state affected usually regards pacific relations as uninterrupted. The touchstone is to be found in the circumstances which immediately precede the attack. The claim of the intervener may be reluctantly acquiesced in, in which case the intervention is non-belligerent; or it may be taken up as the gage of war, and then it becomes belligerent. When it reaches that stage the rules governing the contest differ in no respect from those applicable to any other war, except in those instances of internal intervention which take the form of assisting a mother country to subdue rebels to whom recognition of belligerency has not been accorded.

Discussion as to the theoretical justification for intervention may most profitably be limited to internal intervention, since from the very nature of the other two types exhaustive classification of their grounds is impossible. At one time or another some forty justifications of internal intervention have been advanced, most of which were of the flimsiest description and mere excuses for violent interference by one state in the internal quarrels of another. Out of this number only three are regarded by modern international law as unimpeachable.

"If," writes Hall in the classic statement of the first of these justifications, self-preservation, "a government is too weak to prevent actual attacks upon a neighbour by its subjects, if it foments revolution abroad, or if it threatens hostilities which may be averted by its overthrow, a



menaced state may adopt such measures as are necessary to obtain substantial guarantees for its own security" (*A Treatise on International Law*, 8th ed. by A. P. Higgins, Oxford 1924, p. 339).

Or again intervention is clearly justified as a means of checking unlawful intervention by another state. Such, for example, was the help afforded by Great Britain to Portugal in 1826 in order to secure the Portuguese throne against the attacks of Portuguese subjects stimulated by Spain.

In the third case, where intervention is justified on the grounds of an existing treaty right, a distinction must be drawn. If one of the parties to a struggle which is in actual existence concludes a treaty with a state authorizing its interference and in effect making it an ally, the interference is unlawful in spite of the treaty. Such treaties were common enough in time past; but now the rule of state independence has hardened sufficiently to make them unlawful, since in general a state must settle for itself its own form of government, a right which cannot be alienated by a single disputant section. Where, however, such a treaty has been concluded between two states before any dispute has arisen in one of them, it is impossible to say that it is unlawful. It may turn out to be unwise when occasion arises to put the treaty into operation, but a state is permitted to alienate to another state even its entire sovereign powers. For example, the Treaty of Havana in 1903 and the Treaty of Washington in the same year gave the United States lawful rights of intervention in Cuba and Panama respectively. Another example of such intervention is that provided for by the Treaty of Versailles, according to which the League of Nations may under certain conditions intervene to secure equitable treatment of racial, linguistic and religious minorities.

Beyond these three accepted grounds of justification there are others as to which international practise is uncertain. The most conspicuous of these are humanitarian intervention and collective intervention. The former has been repeatedly put forward to support interference designed to terminate civil discords accompanied by brutalities revolting to the notions of western civilization; such were those repeatedly undertaken by the European powers in Turkey during the nineteenth century. As to the second the only plea in its favor is that it usually excites less disapproval than intervention by one state because it is less likely to be selfish. But it is impossible to dogmatize as to the legality of either, because

most interventions of this or indeed any other kind have been based on a variety of motives, some just, some doubtful, some unjust. It is this fact which makes it so difficult to deal with the grounds of intervention in a generalized fashion instead of taking each case on its own merits. Thus neither nationality nor religion can be now regarded by itself as an adequate reason for intervention, but it has often happened that an intervention on either of these grounds has been confused by a plea based upon several others at the same time.

The social and political consequences of intervention in its varied forms and disguises do not lend themselves to brief summary. During the eighteenth and nineteenth centuries it repeatedly stifled democratic aspirations in the minor European states, as in Italy before its unification, and postponed freedom at the cost of continued oppression. Occasionally it produced beneficial results, as in the intervention which led to the creation of the modern kingdom of Greece in 1830. The recognized pretexts for intervention seemed even more convincing in the eyes of the family of nations when invoked against remote states addicted to civil discord in one form or another and so obviously lacking in the essentials of nineteenth century political and economic stability.

Intervention has been and probably still is inevitable as one means of standardizing the civilization upon which international law is now based. From the point of view of maintaining peace there is something to be said for the suppression of internal discords in another state when it is common knowledge that no revolution can break out in a European state without the likelihood of the balance of power between other states being upset. In many instances this is at best an excuse and not a justification, but it does show clearly that a policy of isolation, if it signifies absolute indifference to what occurs in other states, is at present neither advisable nor practicable. If any change in the trend of ideas about intervention is perceptible it is this. In the future intervention is more likely to be undertaken collectively, and the threat in it will more probably be one of economic outlawry—which is one of the sanctions of the Covenant of the League of Nations—rather than one of actual war.

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See: DIPLOMACY; ISOLATION, DIPLOMATIC; INTERNATIONAL LAW; SOVEREIGNTY; WAR; NEUTRALITY; REVOLUTION AND COUNTER-REVOLUTION; CIVIL WAR;

INSURRECTION; TREATIES; DIPLOMATIC PROTECTION; IMPERIALISM; MONROE DOCTRINE, PROTECTORATE; INTERNATIONAL ADVISERS, CALVO AND DRAGO DOCTRINES.

Consult. Stowell, Ellery C., *Intervention in International Law* (Washington 1921), with exhaustive critical bibliography; Esmein, A., "La théorie de l'intervention internationale chez quelques publicistes français du XVI<sup>e</sup> siècle" in *Nouvelle revue historique de droit français et étranger*, vol. xxiv (1900) 549-74; Winfield, P. H., "The History of Intervention in International Law" and "The Grounds of Intervention in International Law" in *British Year Book of International Law* (1922-23) p. 130-49 and (1924) p. 148-62; Flockher, A. von, *De l'intervention en droit international* (Paris 1896), Cavagliere, Arrigo, *L'intervento nella sua definizione giuridica* (Bologna 1913), Heller, Karl, *Die Frage der Zulässigkeit der völkerrechtlichen Intervention* (Borna 1915); Hodges, H. G., *Doctrine of Intervention* (Princeton 1915); Kébedgy, M. S., *De l'intervention, théorie générale et étude spéciale de la question d'orient* (Paris 1890); Rougier, Antoine, "La théorie de l'intervention d'humanité" in *Revue générale de droit international public*, vol. xvii (1910) 468-526; Robin, R., *Des occupations militaires en dehors des occupations de guerre* (Paris 1913), Snow, A. H., *The Question of Aborigines in the Law and Practice of Nations* (New York 1921) ch. xiv; Lindley, M. F., *The Acquisition and Government of Backward Territory in International Law* (London 1926), Strupp, Karl, *Intervention in Finanzfragen*, *Frankfurter Abhandlungen zum Kriegsverhütungsrecht*, vol. vii (Leipzig 1928); Drago, L. M., *Cobro coercitivo de deudas públicas* (Buenos Aires 1906), Kraus, Herbert, *Die Monopoltheorie in ihren Beziehungen zur amerikanischen Diplomatie und zum Völkerrecht* (Berlin 1913); Martin, C. E., *The Policy of the United States as Regards Intervention*, Columbia University, Studies in History, Economics and Public Law, vol. xciii, whole no. 211 (New York 1921), Offutt, Milton, *The Protection of Citizens Abroad by the Armed Forces of the United States*, Johns Hopkins University, Studies in Historical and Political Science, ser. xlvii, no. 4 (Baltimore 1928), Lucien-Brun, Jean, *Le problème des minorités devant le droit international* (Paris 1923) p. 19-47; Quigley, H. S., "The Far Eastern Republic; a Product of Intervention" in *American Journal of International Law*, vol. xviii (1924) 82-92.

INTESTACY. See INHERITANCE; SUCCESSION, LAWS OF.

INTIMIDATION as a means of achieving desired ends is a feature of behavior where power or authority is based primarily and essentially on force. The less the public feels bound by standardized ethical norms of conduct, the larger are the opportunities of using intimidation. It calls for a technique calculated to evoke fear in the party which is expected to do or not to do certain things, without, however, resorting to direct violence, which would bring the intimidator into conflict with established authority and law. Intimidation is presumed to border on violence,

carefully enough not to cross the line which demarcates the former from the latter yet closely enough to leave no doubt in the mind of the party of the second part that the party of the first part means business.

The distinction between intimidation and violence, on the one hand, and intimidation and persuasion, on the other, is so subtle and elusive that, for example in the field of industrial relations, where intimidation is a part of the workaday procedure, the American courts have found it next to impossible to lay down definite formulations and differentiations between the permissible and the impermissible. While most courts repeatedly have declared peaceful picketing entirely legal provided the picketers abstain from "unlawful intimidation," thus assuming lawful intimidation as a possibility, the Appellate Court in Chicago in 1921 in two separate cases declared emphatically: "There is no such thing as peaceful picketing" (221 Ill. App. 299, 303). "The very fact of establishing a picket line by the appellants is evidence of their intention to annoy, embarrass, and intimidate the employees of the appellee company, whether they resorted to physical violence or not (221 Ill. App. 322, 336). The United States Supreme Court in a decision handed down by Chief Justice Taft in 1921 postulated the right of picketing workers to attempt peaceful communication for the purpose of persuasion but also declared that "if . . . the offer is declined, as it may rightfully be, then persistence, importunity, following and dogging become unjustifiable annoyance and obstruction which is likely soon to savor of intimidation."

Intimidation as a practice is not limited to parties in the opposition who do not share in the privilege of operating, controlling or directly influencing the machinery of government and the administration of law. The resort to intimidation is also practised by persons, groups and institutions of functioning authority as an extralegal means of achieving desired political, economic, fiscal or other pecuniary ends.

Employers seek to intimidate employees by holding out the threat of discharge in order to prevent them from joining trade unions. Enforcement of the so-called yellow dog contracts is one of the means to that end. Potential union organizers among the employees are made to feel that they are risking their jobs by "butting in" on what is "none of their business"; the "agitators" are spied upon and may be directly discharged to instil fear in the hearts of the men at work. Where the employees live in what is

known as a company town, intimidation is achieved by warnings that disloyalty to the employers will result in the cutting off of credits in company stores or in eviction from company owned homes.

Where trade unions are firmly established, employers may seek to intimidate their employees by the prosecution of conspicuous union organizers. The celebrated case of Tom Mooney originated in an attempt of the San Francisco utility companies to intimidate all organized labor in the city. The companies may sometimes have the tacit acquiescence of the standpat element of the trade union movement in a fight on a radical leader, if the conservatives consider their own position endangered or threatened by the ascendancy to power of the radical element. Or employers may seek to intimidate the unions in order to force them to yield important concessions, to which end they will seek to arouse public sentiment against organized labor as responsible for the high cost of living or for the falling off of foreign trade.

Workers on strike seek to intimidate other workers who wish to take their places in the establishment involved. Intimidation need not necessarily be practised in the vicinity of the workshops. The strikers may attempt to reach their competitors at their homes or on some adjacent thoroughfare. The technique of intimidation varies from massed demonstrations before the workshop, accompanied by loud expressions of opprobrium, to the use of subtle yet persuasive methods of conveying the strikers' views of the situation to those who are consciously or otherwise engaged in breaking the strike. Where professional strike breakers are called in, the strikers seek to frighten and discourage them and to force their withdrawal from the scene. For workers who are engaged in strike breaking activity because they need the jobs for their living a different technique is used; the methods are those of persuasion, of demonstration and of appeal to the obligations of solidarity and brotherhood. This sort of approach often proves effective, especially in countries where labor is traditionally and socially class conscious and presents a largely homogeneous racial entity. In the United States, however, where differences of economic position have not generally evolved into social class divisions, where labor solidarity is tempered more often than not by job consciousness and where race and language lines cross those of economic class, it would seem that methods might tend toward intimidation

and violent expression of disapproval rather than toward peaceable communication and persuasion. But this is only rarely the case, judging by the conclusions arrived at by the United States Commission on Industrial Relations, which held that "the greatest disorders and most acute outbreaks of violence in connection with industrial disputes arise from the violation of what are considered to be fundamental rights, and from the perversion or subversion of Governmental institutions."

The workers in most cases do not view their recourse to intimidation in an industrial dispute as contrary to law. Conservative or radical, workers look upon their right to their jobs as a basic and indisputable condition of their welfare. On the other hand, the organs of public authority in objecting to intimidation of strike breakers assume the abstract individual right of any worker to work whenever, wherever and under whatever conditions he chooses; this was the view of Charles W. Eliot when he declared the strike breaker "a national hero."

Intimidation is used in the struggle of labor factions for supremacy. The labor group organized into one trade union may act as a monolithic collective whole when it faces an attacking outside power but it is very often much divided within. Contests for leadership, while they may be couched in statements of differing opinions on policy and tactics, are more often presented in such a way as to carry a threat to the rank and file that might be mislaid into following the opposition. The advantages of a material nature dependent upon maintenance of the leadership in power are featured prominently. The opposition to be silenced by intimidation need not be a minority. A majority may be kept in dread of the danger to which the well being of the members will be exposed, should a change of administration take place. The intimidation technique begins with publicity which plays up the governing machine, presenting it as endowed with extraordinary talent and diplomatic skill, as doubly powerful because it is admired by the overwhelming majority of the rank and file and respected and feared by the employers. Another part of the intimidation technique is running down the opposition as inimical to the best interest of the union. The exclusion of the leaders of the opposition from initiating any constructive action which may win for them the confidence of the rank and file is also a part of that technique. The membership is constantly confirmed in the thought that the opposition

leaders are phrasemongers, good for nothing faultfinders; and the contenders for office and power themselves are made to feel that they stand no chance of ever functioning in any capacity within the organization unless they are ready to accept terms imposed by the administration. The more drastic procedure in the intimidation technique is that of depriving opposition leaders of their membership in the union and thereby excluding them from jobs in the industry.

The intimidation of radical minorities in trade unions presents for the most part no aspects distinctive from the practises of intimidation where an ordinary contest for power takes place. The technique is generically similar to that used where power is in the hands of the radicals themselves, who excommunicate dissenters or objectors to their policies. The historic case of Sacco and Vanzetti is illustrative of what a social group in power will do to intimidate radical dissenters, a game of intimidation practised on a state wide scale. The treatment accorded by the Communist parties everywhere to the followers of Leon Trotsky after his banishment from the Soviet Union may serve as an illustration of the other aspect of this situation. The elimination of Trotsky from the country whose revolution he had helped crown with success and to which he never forfeited loyalty was justified by the claims that his presence in Russia would constitute a danger to the Soviets. In the other countries "Trotskyites" were excluded as a means of intimidating dissenters.

The intimidation of voters by employers interested in certain kinds of politics is a relatively simple procedure. The voters are intimidated by fear of material disadvantage as well as by the odium of nonconformity. Following the Civil War Republican campaign managers practised what the Democrats called "waving the bloody shirt." The campaign for McKinley in 1896, with finance and industry seriously alarmed over the "free silver" danger, was notorious for the variety of means used to intimidate voters, especially the workers, to whom William Jennings Bryan was making a strong appeal. Employees were discharged for turning out to see or hear Bryan; employers threatened to "close down" their factories should McKinley be defeated. Business contracts were made out to contain an invalidating clause in the event of Bryan's election. The Republican party's self-assumed custodianship of prosperity has intimidated and stampeded voters on many occasions since 1896

by the implied or open threat of hard times should the opposition party win.

There are other forms of political intimidation. The political machines which usually dominate local politics practise intimidation on a large scale. Opposition voters are intimidated in various ways, some of them subtle, others crude, in order to keep them away from the polls. Business men are made to fear that contracts or favors may go to competitors if they do not "stand in" with the machine. Criticism of the leaders within the machine is usually fatal for the aspiring politician. The power to grant or withhold patronage is a strong weapon of intimidation in both local and national politics. And intimidation of course is an indispensable weapon in suppressing opposition and maintaining unity in war time.

A whole social group may practise intimidation upon another group, as is the case in the south, where the intimidation of the Negro assumes many forms in which are intermingled factors of a racial, economic, political and social nature. In Europe national minorities are intimidated in much the same manner. In countries where aliens are numerous they are the victims of many forms of intimidation, one of which is the threat of deportation hanging over alien radicals.

Intimidation is also a part of the technique of business. Competitors resort to intimidation which may merge into violence. The oil industry of the earlier years presents many examples of the resort to violent intimidation. Lowering prices in order to force competitors out of business may be considered a form of intimidation. Price associations and cartels often resort to intimidation to force recalcitrants into line. Chain stores by threatening to withdraw their orders sometimes force onerous terms upon small manufacturers who have come to depend upon the chain as their main market. Distributors of securities may be forced to handle certain objectionable issues by the investment banker's open or covert threat of ceasing further transactions. And financial groups out to secure control of particular corporations or to achieve other ends may make use of various forms of intimidation which flow from the possession of great power.

Intimidation is the stock in trade of gangsters and minor racketeers in the United States. They intimidate the small business man and sell him "protection" against the danger of which they make him aware. The small business man or

service agency is continually harassed, annoyed and intimidated by sub rosa representatives of the racketeering gang, while a formal representative offers in matter of fact business fashion protection from the harassing, annoying, intimidating crew. In recent years this industry has muscled its way into the labor union field. The gangster comes to the union, for instance, when it is engaged in a conflict with an employer, and offers to intimidate the adversary and force him to terms. Although his charges for this service are usually reasonable, he later sees to it that union officers become implicated in an overt act, after which he has the union in his grip and can collect as much as the traffic will bear. Should the union try to dispense with the gangster's services, he may intimidate it into retaining them. Having established connections within the union he next approaches the employer, to whom he sells protection from the union's organizing efforts. To convince an employer who shows little anxiety to be protected the racketeer, acting through his gangsters stationed in the union, will engineer "trouble" in order to prove that it pays to be protected. A large scale employer may not fall prey to the game of intimidation; nor will a well organized and intelligently led union open its doors to gangsters.

The success of the practitioners of intimidation is largely due to the growing insecurity of large masses of workers and to the narrowing of opportunities hitherto open to the intermediate social groups above the working class and below the business and professional classes. The peculiarities of the American system of law administration and enforcement, the conflicting jurisdictions of city, state and federal administrative and judicial authorities, furnish an appropriate setting for traffic in intimidation. The absence of normalized socio-ethical concepts and the all pervading reverence of material success as intrinsically valuable, characteristic of a population still in a condition of flux, supplies a milieu in which intimidation not only flourishes but is accepted as a legitimate part of the routine of living. The social process is consequently demoralized and aberrated, as the practise of intimidation makes more severe and still more complicated the conflicts unavoidable in a complex social system based on a pecuniary civilization.

J. B. S. HARDMAN

See: COERCION; VIOLENCE; FORCE, POLITICAL; CIVIL LIBERTIES, LABOR DISPUTES; STRIKES AND LOCKOUTS;

BOYCOTT; POLICING, INDUSTRIAL; BLACKLIST, LABOR; COMPANY TOWNS; COMPANY HOUSING; ESPIONAGE; ANTIRADICALISM; DEPORTATION AND EXPULSION OF ALIENS; RACKETEERING; EXTORTION; MACHINE, POLITICAL; EXILE, SOCIAL DISCRIMINATION, RACE CONFLICT; KU KLUX KLAN.

**INTOLERANCE.** People are apt to condemn or deplore intolerance in others and condone or honor it in themselves. Perhaps it would be more just to say that it appears to them bad in some cases and good in other cases: bad when it is intolerance of the good and good when it is intolerance of the bad. Intolerance in the abstract has lost caste, but abstract intolerance happens to be of no social significance. And it is generally agreed that in the concrete a point is invariably reached beyond which tolerance ceases to be a virtue. In other words, contemporary conditions of life enforce a practical kind of toleration and leave the intolerant spirit largely untouched.

In analyzing the concept of intolerance a distinction must be drawn between the act of tolerating and the tolerant disposition; between the unwillingness to tolerate and the intolerant frame of mind which may or may not be associated therewith. According to the general assumption the person who tolerates a thing is in so far tolerant and the person who does not is to that extent intolerant. Intolerance is held to be an inevitable corollary of deep conviction, especially in social and political spheres, where vigorous discrimination is the beginning of practical wisdom.

This familiar viewpoint is open to serious qualification. Intolerance is far removed from discrimination in the sense of unwillingness to condone certain beliefs or practises. It will hardly be contended, to take an obvious example, that refusal to risk the effects of contagion by disease or insistence upon the isolation of the sick is evidence of intolerance in any proper sense of that word. In a variety of other situations as well discrimination may result from an open minded examination of the factors involved and from a perfectly rational apprehension of the unhappy results entailed; while, on the other hand, so-called tolerance in its negative aspect of acquiescence may be due to nothing more than ignorance or indifference. It becomes increasingly clear that intolerance turns less on the attitude of yes or no than on the nature of the feelings and the state of mind which lie back of the particular attitude. Intolerance does of course in the same way as discrimination deny

sufferance to the object of disapproval. But this is merely its outward aspect. The deep lying source of this outer attitude is a repudiation of the whole technique of empirical experimentation to which human beings acting as individuals or groups owe such objectivity of judgment as they are capable of. Another inner characteristic of intolerance is its cold indifference to the larger social implications of the situation at hand and its resultant tendency to minimize or deliberately to ignore broader relationships which if properly appraised would constitute the determining factors in the formulation of an attitude or policy in regard to the particular problem. This imperviousness to social and humanitarian considerations, combined with the refusal to appraise social programs in a tentative, experimental manner and in this way to keep these programs actively responsive to growing experience, may therefore be abstracted as the essentially distinctive qualities of the intolerant attitude.

The primary source of intolerance as an active social disposition is dedication to a fixed goal. Such dedication may vary from a more or less blind "drive" to a thoroughly conscious yet frenzied espousal or to a calm, reasoned commitment. The values which intolerance aims to preserve may be accreted by accident or circumstance to a general economic or political purpose, as in Fascist Italy. In such cases in proportion as these drives remain actively dominant the values are capable of an opportunistic evolution up to the point where they become too closely merged with the broader purpose to admit flexibility. The values may, on the other hand, constitute an integral component of the original propulsive purpose, as in Communist Russia; here the margin of compromise is correspondingly diminished. The religious institution and the state are the chief types of organized groups in possession of the authority and the sanctions to enforce their conception of values. The ground of intolerance frankly avowed, for example, by Roman Catholicism, is the church's responsibility as the custodian of the eternal and unalterable truth on which the destiny of man in the next life depends. A religious institution claiming universal validity and essential changelessness for its doctrine of salvation is necessarily intolerant. It is a self-evident duty for such an institution to give no quarter to conflicting views, since any conflicting view tends, if the initial premise be accepted, to corrupt true religious belief and thus to endanger

man's immortal soul. "The Church of Christ," said St. Augustine, "persecutes in the spirit of love . . . that she may recall from error . . . to secure the eternal salvation" of her enemies. Wherever doctrine becomes more responsive to growing human experience, religion becomes tolerant in spirit as well as in practise, but institutionalized religion suffers correspondingly in authority and power. Any religion therefore which is based upon correctness of theological belief is forced to adopt St. Augustine's position of *nulla salus extra ecclesiam* and in dealing with heretical opinions is forced to act on the principle that might makes right. The successors of St. Augustine in the mediaeval period could therefore be single minded and blunt. They were sure of their ground, and complete certainty fosters unabashed intolerance; they were unhampered by the prevalence of humanitarian feelings from carrying out extreme measures of repression; and they were provided with adequate social machinery for making their intolerant will effective.

The theoretical justification of political intolerance has varied with the conception of the state. In pagan Rome wide tolerance of belief was permitted, but the state was unyielding in its demand for participation in the imperial rites, which was in a sense an oath of allegiance. Marcus Aurelius, renowned for his intellectual and emotional liberality, prosecuted intransigent Christians because they refused to recognize the sacred character of the Roman emperor, a refusal which threatened to undermine the foundations of the state. With the establishment of the Christian empire the state became in theory the secular arm of religion and throughout the Middle Ages was expected to enforce the dogma of the church. In the early modern period the absolute state adopted the right, formerly exercised by the absolute religious institution, to insist upon uniform belief in all matters involving the stability and cohesion of the polity. A further development of the state idea, necessarily linked with intolerance, is illustrated by pre-war Prussia and present day Italy and Russia. Here the state is conceived as having a moral end to serve and becomes imbued with a Messianic sanctity. In all these instances the basis of intolerance derives from the assumption that a selected set of values either by its very nature is not or for practical reasons must not be subject to revision. The canonization of the will of the people in democratic rhetoric has made prevalent a type of

intolerance even more devastating in its potency than the intolerance of an absolute ruler or of an autocratic dictator. As Lord Acton has pointed out: "It is bad to be oppressed by a minority, but it is worse to be oppressed by a majority. For there is a reserve of latent power in the masses which, if it is called into play, the minority can seldom resist. But from the absolute will of an entire people there is no appeal, no redemption, no refuge but treason."

Not only the church and the state but any political, military, social, economic, educational or religious group having a program to forward or a vested interest to protect may become intolerant and if in a position to do so may attempt to suppress all manifestations of divergence. But whatever the nature or the source of the intolerant disposition, it enters the militant stage only when the values accepted as ultimate are felt to be actually in danger. An important factor in all persecution is fear. Even the religious persecutions of the past for all their appeal to eternal truth and their zeal against error as a spiritual disease did not take violent form except when intellectual or economic developments aroused lively fears for the prevailing religious system. It could be argued that intolerance unassociated with a fear complex of some sort is from the social point of view quite negligible.

The World War, which liberated a host of fears on the world, marks the beginning of a strong accentuation of militant intolerance; just as the subsequent fluctuations of intolerance reflect ups and downs in the apprehension of danger to social, political and religious institutions. For a considerable period prior to 1914 the civilized world was comparatively tolerant. There was good ground for John Morley's opinion, expressed in the 1870's in his book *On Compromise*, "that the right of thinking freely and acting independently . . . is now a finally accepted principle in some sense or other with every school of thought that has the smallest chance of commanding the future." This optimism, shared by many of Morley's contemporaries, has given way in the post-war period to a growing skepticism even in England and still more in those countries where the march of events gives support to Mussolini's dogma that the road to progress lies "over the more or less decomposed corpse of the Goddess of Liberty." In the United States too a retroactive tendency has been gathering momentum. The

passing of the illiteracy test over President Wilson's veto, deportation processes, criminal syndicalist laws, anti-evolution legislation, special oaths of national allegiance for teachers, the decision of the United States Supreme Court (October term, 1930) to the effect that the expressed will of Congress must be accepted as harmonious with the will of God and the like are indications of a movement toward cultural uniformity by coercion.

To deal constructively with the problem of intolerance is obviously difficult. No institution or organized group having adopted a program of action can afford to turn aside to consider any and every counterproposal. Successful administration of a social scheme is impossible without a kind of blindness to criticism. In this sense the refusal to tolerate is inevitable and useful, but as already indicated this is not intolerance in its stricter meaning. Adherence to a program turns into intolerance when the program becomes an end in itself and the uses to be served by the program are a secondary consideration. And "the uses to be served" are in their turn instruments of intolerance when as objectives of action they are looked upon as the final court of appeal in disregard of the living urgency of experience. If education in and out of school can develop a general understanding of ideals, customs and institutions as tentative means in the search for happiness, means to be freely tried out yet always subject to revision at some point by reference to the course of everyday life, education will greatly aid in overcoming intolerant inclinations. And in so far as such institutions as the state, the church and the school can more obviously and more effectively secure what must be gained through co-operative effort, the reason for the fear which has been and remains one of the chief causes of intolerance will have been removed. But the most important reform is also the most difficult to accomplish. According to the conventional conception of society, especially as this is entertained by dominant educational, religious and political groups, the mass of men must be cut from the same cloth. The ideal is adherence to a common pattern. A genuine or positive tolerance of spirit, on the contrary, would lay down as the basic social principle the intrinsic importance of individual differences. In a society which aimed at uniqueness in its citizens rather than at sameness, although in the process it would create for itself other problems, the evils of intolerance would tend to be eliminated

and the dangers of mediocrity and standardization greatly minimized.

M. C. OTTO

See: PERSECUTION; FANATICISM; RELIGIOUS FREEDOM; PROSELYTISM; INQUISITION; RACE CONFLICT; SOCIAL DISCRIMINATION; ANTISEMITISM; ANTIRADICALISM; CIVIL LIBERTIES; FREEDOM OF SPEECH AND OF THE PRESS; CENSORSHIP.

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INTRANSIGENCE entered as a term into social and political theory in the year 1873 when Spanish republicans put through a revolution and set up a democratic government. The constitution written for their new republic did not suit the radical section of the revolutionary party. They refused to accept it and turned a cold shoulder to every proposal that fell short of their demands. Their stand created an impasse, which was one of the conditions that led to the restoration of the monarchy. It was described as intransigent and for some time the political radicals of the Latin countries of Europe were called intransigents.

The attitude of mind which is designated by the name is, however, by no means restricted to radicals. Intransigence is a typical and recurrent phenomenon in the life cycles of societies and is found indifferently among any company of extremists. On the whole it has been somewhat more persistent among conservatives and reactionaries—such as the loyalist adherents to the house of Stuart in England, the Carlists in Spain, the royalists in France—than among radicals. Its attribution to radicals is an accident of the fact that it was in a radical situation that the attitude first received its identifying name. The name applies to any person or group which refuses to compromise its principles or arbitrate its demands, which rejects the adjustment of differences or the conciliation of disputes. The intransigent takes his stand upon the principle of "all or nothing," "rule or ruin."

In the social process such a stand rarely develops as a healthy or intelligent one. It presents itself in the form of a counsel of perfection, but its roots lie commonly in a mood of despair. The mood is hardly ever conscious. Its stimulus may be some not too obscure individual diathesis, like Savonarola's; or it may be a feeling of impotence and frustration in the presence of insuperable social facts. Whatever the stimulus, a program is formulated to alleviate the unrest it arouses. If the times are unstable, if many feel uncertain and insecure, this program becomes a focus of equilibration for a group. The group comes together, debates, analyzes, refines, reformulates. In the course of time an organic doctrine takes shape which has established itself as the ruling passion of the group, with all the authority and ineffability of a religious revelation, to be set up as an imperium over all the people. If the particular national or ecclesiastical economy where this is happening continues to disintegrate and the mores loosen, the group with the set doctrine and discipline may be able to seize power and apply its doctrine as a program. When this happens it finds that to retain its power it must compromise its principles. If it fails to compromise it is defeated. The effect of defeat, however, is not an abandonment of the doctrine but an intensification of faith. The validity of the doctrine increases as the power and importance of its adherents diminishes. Every practical setback is compensated for by an enhanced theoretic affirmation. The affirmation becomes in the course of time the compensatory corrective to every feeling of inferiority or deficiency from which the affirmer suffers. *In hoc*



*signo* is his sense of personal dignity and worth preserved and victorious; he must hence affirm it regardless of consequences.

Intransigence thus involves all the stigmata of a religious cult. Its doctrines with their commentaries and interpretations become tantamount to a theology. Their role is to serve as rationalizations of the discontents of their believers. Once formulated and fixed, such rationalizations become the special tradition of a group and are passed by emotional contagion and doctrinal schooling from one generation to another. They gain when so transmitted a liturgical and ceremonial significance. And this constitutes their vital function; by its means they survive even when they contain an aggressive component which leads their devotees—as is so often the case, for instance, with the Camelots du Roi in France—to clashes with the police power of residual society.

Often the entire response of an established order to its intransigent minorities is occasional action of the police. There are several reasons. To begin with, the mere definition of their principles and the ordination of their practises serve to drain and to relieve the implicated feelings of intransigent associations. Again, their small numbers, the exclusiveness of their "mystery" and their consequent supercilious attitude toward the uninitiate and profane who neither acknowledge their doctrines nor admit their disciplines all help to expand their self-feelings, until they gain without further action a sustained sense of personal adequacy and even of superiority. Radicals and conservatives alike make themselves, by means of their intransigency, in their own eyes a company of the elect which promulgates right rules but bears no responsibility for applying them.

Avowed religious cults manifest these traits of the intransigent in their sumptuary practises, their diet and their dress—such as the *Kashruth* of orthodox Jews, the prescriptions and tabus by which Gandhi and his sect govern their personal habits, the buttonless garments of the Mennonites, the uncut and unshaven headpieces of the Seventh Day Adventists and the practise of marriage and divorce of the Roman Catholics. The prohibition movement in the United States is allied to these by mood and sanction; so are vegetarianism, antivivisectionism and various health cults. The domain of political and economic organization offers such types as the legitimist cults already referred to of France, Spain and England. American com-

munists as compared with Russian are intransigent. So are the Industrial Workers of the World in the labor movement. So are extreme pacifists. So are all anarchists. In all these cases the intransigence develops as compensation for feelings of inferiority set up by some perhaps unrelated situation. Thus the doctrine and discipline of Jewish orthodoxy compensate the persistent failure of the Jews to realize their national aspirations. Defeated in those, they define themselves as a chosen people whose election is signalized by peculiarities of dress and diet, by priestly peculiarities made common to a whole people. Similarly the principles and practises of the royalists of France offset the obvious ludicrousness of titles of nobility and courtly ceremonial in a bourgeois republic of petty tradesmen, rentiers and farmers who have abolished monarchy and all its impedimenta. Prohibition, which when bona fide is mainly a woman's gospel, provides a somewhat secularized channel for the emotions of the genteel tradition whose sectarian manifestations get belittled and nullified by the harsh realities of changing American society with its pioneer standards and industrial economy.

Prohibition in the United States is an intransigency which has come to power and has been compromised, but not by its honest adherents. As a rule it is the leaders of the intransigent group themselves who under the weight of responsibility which comes with power abandon rationalizations for reasonableness, principles for policy and ceremonial for purposive action. The history of communism in Russia provides the great current example of a substitution of this type, as the record of Christianity in Europe provides the great historic one. But rarely does intransigency happen into power. In the main its influence in the socio-political process is a function of its powerlessness. Powerlessness leads to the elaboration and refinement of doctrine and to ceremonial or symbolic action. The latter is dealt with, if at all, by the police; but the former operates by distortion and contagion. Its systematic completeness and logical rigidity make of it almost automatically a focus of attack. It becomes to its opponents a surrogate for the devil of orthodox theology. They incarnate in it their own fears and discontents. So royalist salvation is republican damnation; communist heaven is capitalist hell. Socialist, communist, Bolshevik, mean in America what bourgeois or capitalist would mean in Russia if such a group were free there to publish principles and pro-

gram. But attack imposes attention to the enemy, calls for information concerning his abilities and weaknesses. The required attention distorts the direction of the processes of the majority; the needful information contaminates its purposes. If the intransigency is of sufficient prestige and loud enough it remains unchanged in itself, but it has considerably modified the residual social process. This is the case with royalism in France and Catholicism and communism almost anywhere in industrial Europe. Where the intransigency lacks prestige it remains an irrelevancy and is left behind in the backwash of social change. This is the case with most of the lesser religious cults.

• HORACE M. KALLEN

See: COMPROMISE; OPPORTUNISM; CHANGE, SOCIAL; RADICALISM; CONSERVATISM.

INVALIDITY INSURANCE. See HEALTH INSURANCE; OLD AGE.

INVENTION. A sharp distinction is often drawn between invention and discovery; the former is defined as an active combination of social elements into a new form, the latter as a more passive perception of existing relations of such elements. The two processes are, however, closely interrelated. Discovery of new facts or laws in physical or mental nature presupposes the invention of new methods of acting or thinking; on the other hand, invention of new influences and reactions whether in nature or in society is rarely devoid of newly discovered facts as assisting, inspiring or even originating its conditions. Invention in contrast to discovery is usually thought of as a change founded on or culminating in a new or altered technical process, in the sense of a combination of physical or material factors. However, there are also the "moral" inventions stressed by modern French sociology; Gabriel Tarde rightly balanced the conservative and collective forces of social imitation against the innovating and individual forces of social invention. Social scientists must reckon with mutations as the casual appearance of new data in a given combination of interrelated phenomena; their research in causation is able only to analyze the conditions under which man's creativeness reacts to or furnishes such new data.

Inventions may grow out of fixed situations and habits by imperceptible degrees, principally through the continuous summation of a large number of small deviations from initial situations and habits. In such cases, which are preva-

lent in primitive as well as in modern industrialized mass society, as has been shown by Lester Ward, Lloyd Morgan and others, the difference between invention and imitation is reduced to a minimum. The momentum of the change is overwhelmingly on the side of collective action; the singularity or heroism of invention and inventors is negligible.

Modern and primitive societies also furnish examples of a strong preeminence of the creative and voluntary element in both the origin and the elaboration of the inventive process. The instincts of workmanship and of leadership cannot be severed from the emergence of technical or non-technical invention; the whole process of invention becomes in consequence at once more irrational and more rationalized. Recent ethnology shows that heroes are not always legendary symbols of collective change. Modern technical invention as a commercialized branch of the division of labor also appears to serve a system of social wants which may be taken for granted by modern man but as a whole hardly admits of a rational explanation.

The two aspects of invention might seem to be another statement of the ethnological controversy between evolutionism and diffusionism. But the relation is at best an indirect one. Diffusionist conceptions are strengthened when it is recognized that a good deal of inventive change has definitely been introduced into static societies from outside. On the other hand, it will be well to regard the concept of a static society as a negative rather than a positive one and to ask what is to prevent cumulative progress through evolution. Scientific appreciation of social change by invention demands patient empirical research into the series of factors whose interrelation determines the fate of invention in human society. These factors are the character of real or personal data acting as initial mutations and the character of the natural and social systems and organisms that respond to those stimuli actively or inactively, rationally or irrationally, consciously or unconsciously. The traditional method of logical or psychological speculation on the origin of technical principles, such as the wheel and the screw, must be replaced by the collection of data on the different milieus and moments of their first historical or prehistorical appearance.

In the history of civilization Greek society was the first to exhibit the signs of technical and "moral" invention in the more discontinuous and explosive form of its sophism and idealism.

Greek mathematics and physics have provided all later civilizations with the fundamental material for social and scientific construction and reconstruction; the manner in which invention was here anticipated for centuries has provoked justified wonderment. Greek culture has served as a principal basis for theories of the inventive process that emphasize the difficulties encountered by inventions in a politically and economically static society and the dependence of the spread and development of inventions on a parallel evolution of the whole social body. One of the striking incidents in the history of technology is the precocious advance of Greek scientific theory toward revolutionary inventions, such as the steam engine and pneumatic artillery, and the arrest of this advance not so much by social checks or prohibitions directed against it as by the limited and unimportant uses to which it was put: the utilization of steam expansion in Hero's steam boiler and of the same great physicist's anticipation of Percival Everitt's automatic seller for the religious purpose of distributing holy water are pertinent examples. But it is precisely these positive instead of negative deflections of inventive processes that warn against laying too great and one-sided stress on the materialistic conception of social conservation as a result of undeveloped productive forces. It would be just as legitimate to conclude that the tremendous outburst of human intellect represented by Greek civilization was devoid of far reaching social and economic consequences because it was insulated by the economically neutral city-state and its aristocracy; this very economic sterility may have contributed to Greek intellectual precocity.

Mediaeval society erected under the auspices of the Roman church the static equilibrium of social strata and of economic existence within these strata into an ideal of sufficiency. Even if reality did not always and everywhere correspond to this ideal, its tendency clearly discouraged violent inventive progress in reference to both supply of and demand for economic goods and services; similarly it discouraged new mental and moral views and attitudes that might have stimulated technical invention. On the other hand, there was not only the underground devotion to ancient intellectualism both in ecclesiastical tradition and in the Arabian Aristotelianism and empiricism that was like a surf all along the southern border of mediaeval Christian culture; there was also, as modern research reveals, a slow cumulative growth of

empirical observation in the various scientific fields connected with mediaeval arts and crafts, such as medicine, mining, fishery and nautics. It is probable that the outward triumph of the Renaissance was less of an original landmark and more of a sudden sprouting of germs after long incubation than traditional conceptions would have it. In some respects the scientific urge of the Renaissance, bound up with the mystical intuition of alchemy and astrology, must in a sense have exerted a restraining influence upon extreme innovations that are taken too widely. From this viewpoint the theory of Max Scheler that the church was fundamentally friendly toward scientific discoveries and innovations and that it combated in Giordano Bruno and later in Galileo not so much the scientific kernel as the metaphysical setting of their doctrines loses its *prima facie* paradoxical character. The new monastic orders of Franciscans and Dominicans, as they made for a spiritual and moral intensification of the Christian religion, brought forth theoreticians and inventors of the rank of Robert Grosseteste and Roger Bacon; and the Copernican revision of the Ptolemaic astronomical systems was more or less anticipated in the school of Ockham at Paris.

The role of invention in the form of technical and social change in modern Europe is, however, as unique in the history of mankind as is the contemporary advent of "capitalistic" economy; the two may be taken as different aspects of the same great transformation of the western world. The underlying principle of this transformation is the changed attitude of man to his natural and social surroundings, from the acceptance of a given state and order of things to an ever growing determination to use—and belief in being able to use—discovery as a means of altering and adapting the environment to the fulfillment of new wants and plans. This changed attitude, which conceives of science as an instrument for making and remaking a universe of one's own, seems to contain the secret of the European's ultimate political ascendancy over the older civilizations of Asia. It alone was able to hold down the dangers of Mongol and Islamic invasion and in turn made western Europe the center of discovery, colonization and economic integration of all the outlying continents. "Moral" inventions were henceforward directed toward extending the circle of rationalistic enlightenment to an ever wider range of groups and strata inside as well as outside this cultural center, under the political and social concept of modern democ-

racy, while scientific and technical inventions have been advancing on parallel lines with the object of exchanging production and consumption in ever widening markets. Hence the parallelism of periods of political and industrial revolutions (mostly with a certain lag of the latter) led by England in the seventeenth and taken up by America and France in the eighteenth century. As every political revolution is the emergence of tendencies and forces long accumulated in a social and political situation but has distinctive causes and characteristics of its own, so revolutionary epochs of modern technical invention show extended and collective effort toward the solution of certain productive problems and sudden and individual intensification of this effort. The leading inventions of modern industry, those of the textile trades and of metallurgy and chemistry, had been anticipated experimentally and economically from the time of the arrival of capitalistic enterprise in the fifteenth and sixteenth centuries. But only their condensation in the shape of a few definite solutions, called forth by peculiar social and economic situations, enabled them to revolutionize modern economic life and to assign definite evolutionary power and place to the principal capitalistic nations, England, France, the United States and Germany. Made possible by an exceptional combination of transport facilities and mineral wealth, the heroic age of English industrial invention was opened by the pressure of world demand for English yarns and cloths, the mechanical fabrication of which in turn stimulated puddling and coke production as a basis for the new textile machines and steam engines. Invention in France was applied rather to the artistic refinement characteristic of its special function in the international division of labor. Eli Whitney's cotton gin and McCormick's reaper were as peculiar to the economic demands of the United States as Fulton's and Ericsson's work was to the shipping and shipbuilding trades. Germany fructified the inheritance of French chemistry and English iron smelting in the inauguration of the latest stage of industrialization, that denoted by the branching out of modern coal industry into the gigantic networks of the chemical and electrical industries.

The biographic history of these inventions also betrays the duality of collective atmosphere and individual inspiration, of the genius and the quack, of inventors and money makers. If the theory of economic motivation has tended to exalt the psychology of inventions above that of

industrial enterprise as a kind of earnest of a more altruistic future of society, it seems to have overlooked in a too rationalistic way the fundamental relationship between the two; namely, the ultimately irrational will to power that urges both the apparently disinterested work of scientific and the apparently acquisitive work of economic conquest. In historical perspective the two are coordinated products of the machine age, in so far as even in the case of the most independent pioneers it is the technical and economic urge of the age rather than any conscious motive or set of motives that furnishes the background and presupposition of their activities.

In the economy of the capitalistic market there has also been some inclination to idealize the inventor as the humanly more valuable but economically helpless or inferior object of exploitation by business. Without minimizing the representative importance of the many cases that have realized this pattern one may draw attention to the fact that an extreme individualistic view obscures the laws of interdependence between the inventive genius and economic society. Invention, like all other situations of "opportunity cost," contains at least an element of potential monopoly, the existence and execution of which depend largely on the whole body of surrounding social institutions. The prevailing form of this dependence is social protection awarded to the inventor—from the magic secrecy of early procedures and discoveries to the patent and copyright laws of modern civilized nations and to international treaties. It is significant that the first introduction of patent laws in early Stuart England was closely bound up with the mercantilist monopolies so objectionable to economic liberalism. The individual fortunes made under patent laws by inventors or appliers of inventions are frequently balanced by the fortunes lost in obtaining and defending the grant of a patent. The possible retardation of economic progress by individual authorship rights has its counterpart in the apparently frequent practise of capitalistic business of buying up inventions for the purpose not only of preventing untimely losses in productiveness but also of keeping up monopolistic situations. In the case of major inventions involving new industrial developments the tendency of modern business toward ever increasing size and concentration of plants explains the tremendous difficulties and risks involved in the step from the most perfect technical elaboration of an idea to its most modest economic application. The latter is governed not only, as is com-

monly supposed, by the laws of cost and supply prices but in a much more precarious manner by elasticities of demand that play the most surprising tricks even under a "dictatorship of the producer," as exhibited by modern standardized mass societies. On the other hand, the directed invention, which has come to take such a prominent part not only in the laboratories and the experimental studies but also in every other department—from personnel to marketing—of modern rationalized industry, has to a large extent exchanged the creative and individual for the cumulative and collective function and therefore the entrepreneurial for the executive labor character. This development has raised new and difficult problems of both internal remuneration and external commercial law: for example, in the question of the betrayal of business secrets to competitive firms.

The historically unique character of the modern age of industrial invention in the western world is best shown by the signs of a change or at least a division of public opinion on the social desirability of the continuance of technical progress at the present rate of increase. The sentiments prevailing in the early decades of last century, when not only the revolutionary workmen of the Luddite movement but even a leading theorist like Ricardo came to despair of a smooth working of the "law of compensation" for loss of employment caused by the increased production resulting from the introduction of machinery, repeat themselves a hundred years later. Technological unemployment has become a favorite reproach chiefly of socialist economists against what appears to them the incapacity of the capitalistic system to maintain proportions between technical progress and its rationalizing effects on production and consumption. The "law of compensation" can today no more than a century ago be regarded as an automatic process. On the contrary, the increase of the national and international complexity of modern industrial society makes adaptation to technical progress a series of equations with an increasing number of unknowns. Empirical research has made little progress toward the solution of the problem of the normal introduction of technical revolution into the apparatus of modern production. It has not determined whether or to what extent capital for rationalization purposes is taken away from other enterprises; nor has it revealed the proportions between negative rationalizing as cost saving and positive rationalizing as expanded production, between primary unem-

ployment created in the rationalized industries and secondary unemployment created in the industries that used to supply the primarily unemployed—that is, between the gain in physical productive power and the loss in purchasing power of the masses of a society, not to speak of the changing conditions of money and population. The planned economy of a communistic state might on principle do much to remove friction and accelerate adaptation between these various elements. But at least under the peculiar conditions of the Soviet government proof has not yet been given that this principle makes much practical difference, because even the complete dictatorship over labor and capital claimed by this government has not yet removed the enormous disproportion between a strangled national consumption and a forced investment of capital into a huge apparatus of industrialized production.

While societies like those of the United States and Russia continue to believe in progress by unchecked technical and other invention, because they believe either the harmony of the market or the dictate of economic plans will be able to make the ends of the social product and the social income meet, some skeptical social scientists question either the blessing or the possibility of such unchecked progress. They ask whether this progress in continuing to replace physical and mental "nature" in society by the artificial structures of an invented world might not dry up the sources of creative force that underlie even the most rationalized and collective inventing. They further inquire whether there is logic in the assumption of an endless rectilinear technical accumulation and whether a static state of equilibrium can be evolved out of a series of processes inherently dynamic. They point to the possibility that political or economic catastrophes may befall the domination of the world by the western nations through the agency of racial or economic outsiders, or that the genius of the western nations may turn away from the inventive period of the last few centuries, backward or forward to other forms of activity and symbols of desire. But such possibilities of inverted progress cannot be deduced from any actual data of the present situation in modern scientific thought, when even the program of world revolution leaves unshaken the factor of technical progress in the older conceptions of economic society.

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*See: CHANGE, SOCIAL; INNOVATION; IMITATION; DIF-*

FUSIONISM; TECHNOLOGY, INDUSTRIAL REVOLUTION; CAPITALISM; BUSINESS CYCLES; UNEMPLOYMENT; PATENTS.

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## INVESTIGATIONS, GOVERNMENTAL.

The term governmental investigations might be interpreted broadly to include every attempt on the part of a governmental agency to secure information of any sort whatsoever—even the research and investigations of a scientific, commercial, agricultural or similar character which are constantly being conducted by various departments of government and attempts by the department of justice or the police to solve particular crimes. It is perhaps more valuable, however, to limit its meaning in this connection to inquiries conducted by ad hoc bodies or by permanent bodies empowered by some definite statute, resolution or order to investigate some particular problem of public interest. Governmental investigations may be motivated by several distinct purposes: to assist legislative bodies in judging of the elections, returns and qualifications of their members; to effect legislative or executive supervision of the administration; to secure information to aid in framing new legislation, amending old laws or voting appropriations; and to determine the causes of particular events, for example, military defeats, industrial disputes or business depressions. Investigations may serve also either incidentally or even primarily to inform public opinion regarding the matters under inquiry. With the growth of governmental powers, the widening of the suffrage, the increasing democratic control of government, the development of new means of communication and the widespread dissemination of education this informing function has become more and more important.

Inquiries are customarily conducted by legislative or administrative committees or commissions; but in relatively rare cases, such as the inquiry into the magistrates' courts of three counties in New York City during 1930-31 by the Appellate Division of the Supreme Court, they have been committed to judicial bodies. The question as to which agency shall undertake an inquiry has at times assumed considerable im-

portance. In the struggle for parliamentary government in Prussia, Germany and Austria in the latter half of the nineteenth century the demands of the legislatures for their own investigations were several times checkmated by the creation of royal special investigating committees composed entirely of members appointed by the governments or of such persons and members of the legislatures. By setting up the Dodge Commission President McKinley similarly forestalled congressional investigation into the conduct of the Spanish-American War, the only war engaged in by the United States which was not investigated by Congress.

In Great Britain and the United States the investigating committee or commission generally proceeds by holding hearings, after due notice, at which persons believed to possess relevant information are invited, requested or summoned to appear and testify. In France and Germany, while the method of oral hearings is employed, greater reliance is placed on other methods, such as distribution of questionnaires and analysis of statistical samples. Increasing use of these methods is being made by English speaking countries.

Effective utilization of the method of oral hearings rests fundamentally upon the power to summon witnesses, to compel testimony, to require the production of books and records and to have recalcitrant witnesses punished for contempt. Such power is not possessed by ordinary legislative committees, although they may conduct hearings on a voluntary basis for the purpose of determining the opinion of the public as a whole, of experts and of interested parties on proposed legislation. For special tasks, however, the legislature may endow such committees or ad hoc bodies with the power to summon witnesses and require the production of papers. Royal commissions of inquiry in Great Britain can exercise enforcing powers only if specifically granted them; departmental commissions do not receive such grants. Congress generally gives the power to investigating committees in the act creating them, except in cases where the purpose is solely educational, as in the inquiry conducted in 1931 by the United States Senate Committee on Manufactures upon the proposal for a national economic council. Similarly temporary fact finding commissions in the United States are rarely given enforcing powers, although permanent administrative bodies with investigative functions, such as the Interstate Commerce Commission and the Federal Trade

Commission, are generally vested with compulsory testimony powers within limits. The investigating body cannot itself punish disobedience but it can generally call upon the regular organs of justice or, in the case of legislative investigations, upon the house which created it, to punish recalcitrant witnesses.

Investigating committees empowered to compel testimony are not bound by all the principles or precedents of courts of law regarding the privileges of witnesses or the giving of testimony. The witness in the United States has no inherent right either to give evidence in his own behalf or to be advised by counsel or to cross examine his accusers. There has been a growing tendency in recent years, however, to allow witnesses greater liberty to consult counsel; and committees usually permit counsel for any interested person to cross examine witnesses. Although investigations are not criminal cases, the only privilege which Congress has generally tended to recognize is that guaranteed by the Fifth Amendment to the constitution—that "no person shall be compelled in any criminal case to be a witness against himself." In order to secure testimony without violating the amendment Congress in 1857 passed a statute denying persons the right to refuse to give incriminating testimony but granting them immunity from any prosecution in connection with the acts testified to. Similar legislation was enacted by the legislature of New York state in 1931 in order to facilitate the work of the Hofstadter Legislative Investigating Committee. Congress, however, after seeing confessed corruptionists escape prosecution through their testimony amended the law in 1862 to provide that witnesses in congressional investigations must give testimony even though incriminating, but that their testimony or private documents produced by them could not be used against them in subsequent prosecutions. Samuel Seabury, counsel for the Hofstadter committee, attempted to escape the same difficulty by refusing to permit important officials suspected of corruption to testify unless they signed a waiver of immunity. The House of Representatives has at times indicated, although never in precise terms, that some of the "guaranties of a fair trial" apply in investigations preliminary to impeachment proceedings. In Germany also a distinction has been made between investigations whose object is criminal or disciplinary action and those merely incidental to legislation; in the former the privilege of refusing to give incriminating

testimony is recognized, but not in the latter. France apparently provides the least protection to witnesses before investigations; England, on the other hand, has in the Witnesses Protection Act of 1892 gone furthest in the other direction.

In France hearings are private; most other countries provide that they be public unless a majority of the committees votes otherwise; in the United States, while they may be either public or private, the tendency in recent years has been toward publicity. Publicity aids the committee by informing and arousing public opinion. In the Hofstadter Legislative Committee investigation into the government of New York City in 1931 and 1932 private hearings before a single committee member were used to obtain information later presented in public hearings before the committee as a whole. The power of committees to designate subcommittees of one or more to hear testimony is generally recognized, but such subcommittees do not generally have the same control over persons and papers as the full committee, unless specifically granted by the assembly.

The right of investigating bodies to hold meetings and take testimony at places other than the seat of government has now been generally established. Congressional committees in the United States may hold hearings during or between legislative sessions, at the committee room in Washington or elsewhere. In senatorial election years the Senate usually appoints a special committee to investigate campaign funds, which holds hearings in various states.

Investigating committees usually have the right to report at any time; they may make interim or progress reports and a final report upon the completion of the inquiry. Both majority and minority reports will be filed if the members are not unanimous. The assembly as a rule orders reports of its investigating committees printed together with the minutes of the hearings, which often fill several volumes. More than 11,000 printed pages emerged from the hearings of the Senate and House committees on the coal problem during the Sixty-third to the Sixty-seventh Congress, inclusive. Reports of British royal commissions are printed as parliamentary papers; those of American fact finding commissions are generally printed by Congress but sometimes by quasi-public agencies. The reports of investigating committees are invaluable for an understanding of the social, economic and political history of the countries concerned.

The power of legislative assemblies to institute investigations and to endow its investigative bodies with the power to compel attendance, testimony and the production of books and records was first established by the English House of Commons. A legislative committee of inquiry vested with this power was used in the House of Commons in disputed election cases as early as the end of the sixteenth century. There are records of many subsequent election investigations. The earliest grants of investigative power to parliamentary committees and their enforcement by the Commons as part of the legislative process and to determine the legality of expenditures also occurred in the seventeenth century, especially after 1688. Innumerable instances of inquiries since that time, of orders for the attendance of witnesses and of punishment for disobedience have definitely established the broad investigative powers of the House of Commons. In *Howard v. Gosset* [(1845) 10 Q.B. 359] Lord Coleridge said that the Commons could inquire into "every thing which it concerns the public weal for them to know; and they themselves, I think, are entrusted with the determination of what falls within that category. Coextensive with the jurisdiction to inquire must be their authority to call for the attendance of witnesses, to enforce it by arrest when disobedience makes that necessary . . . ." The power to commit for contempt contumacious witnesses before committees of investigation has been recognized and sanctioned by judicial decision as an inherent and indispensable auxiliary of the legislative power, without which the Commons could not perform its legislative and supervisory functions; just as from ancient times legislature and courts have exercised the power of summary commitment, for reasons of necessity and self-defense, to deal with libel and slander or with breaches of their privileges.

The importance of legislative investigations is declining in England because of the development of more permanent means of performing their functions. Since 1868 election contests have been tried in the courts. Since 1832 Parliament has placed increasing reliance upon royal commissions to make inquiries preliminary to legislation. These commissions are agencies of the executive and they enjoy a longer tenure and are composed of a more impartial and expert personnel than legislative committees. Most of the great English social reforms have resulted from their investigations. They do not have enforcing power unless specifically granted by Parlia-



ment. The British Treasury uses departmental and interdepartmental committees to supervise and control the financial affairs of the several services; such committees, however, cannot compel testimony. Since 1866 the Commons has received complete reports from the comptroller and auditor general on the manner in which its grants have been expended. Since 1861 the Standing Committee on Public Accounts of the House of Commons has been a critic of Treasury administration, and by reporting its findings to the Commons has fastened financial responsibility on the executive. Several additional sanctions for enforcing ministerial responsibility to the Commons reduce the need for committee investigations: "grievance before supply," the daily parliamentary question hour, supplementary questions, debate on the motion for adjournment and on the address in reply to the speech from the throne, and votes of censure. The composition of investigating committees of the House of Commons is as a rule non-partisan, and almost invariably their work is concerned with the determination of questions of fact or with the formation of judgments based on facts and the opinions of experts. The British select committees are not intended to be the tools of party tactics and party fights seldom occur.

The inquisitorial power was assumed by the American colonial assemblies, which modelled themselves after the House of Commons and asserted the same privileges. The contempt power was conferred upon all colonial legislative bodies as an essential auxiliary of the legislative power and without specific provisions. The records of the thirteen colonial assemblies, the practise of the Continental Congress and the committees of investigation of the state legislatures in the period following the revolution furnish ample evidence of the effective transfer of this institution to American political practise. In the course of their existence state legislatures have authorized thousands of investigations and have equipped their committees with the contempt power, which with rare exceptions has been upheld by state courts. At least ten state constitutions now provide specifically for this contempt power; some states do the same by statute.

The federal Congress, which began to function in 1789, also assumed that the legislative power implied the use of committees of inquiry with power to send for persons and papers. The first investigation by a committee of the House of Representatives with such power concerned

the defeat of General St. Clair in the northwest in 1792; the duty of the House to guard all public expenditures was cited as justifying this procedure. The first Senate committee inquiry under a grant of power to call for persons and papers took place in 1818 and dealt with the conduct of the Seminole War in Florida. Military affairs and operations were thus the object of the earliest investigations by the United States federal government, and they have been the object of more such investigations than any other single subject. Committees of inquiry had been employed to investigate the conduct of administrative departments and officials a number of times before 1827. In that year for the first time a standing committee of the House was given power to call for persons and papers in order to investigate the effect of a proposed revision of tariff duties upon domestic manufactures. This was the first congressional investigation as a preliminary to legislation. Investigations of the qualifications, behavior and immunity of members have been conducted upon occasion by committees in both houses. The first joint committee of both houses was created by a resolution passed in December, 1861, to investigate defeats of the Union armies.

About 285 investigations of the executive were completed by select and standing committees of the House and Senate from 1789 to 1925. Only three Congresses have not instituted such investigations, while no administration has been spared. A high watermark was reached during Grant's eight turbulent years, when Congress undertook thirty-seven inquiries into the administration; but this was surpassed in Wilson's last two years, when fifty-one congressional investigations either of the executive or to secure information were authorized. The total number of congressional investigations concerning members or the federal judiciary or collateral to the lawmaking function probably runs into the hundreds. Landis gives an incomplete list showing forty Senate inquiries between 1818 and 1923, thirty-eight House investigations between 1792 and 1892 and fourteen joint investigations between 1861 and 1922 by committees empowered to send for persons and papers.

On various occasions hostile witnesses have challenged the power of Congress to punish for contempt their refusal to testify or to produce papers. In 1857, after a newspaper correspondent refused to answer questions put to him by a committee appointed to investigate published

charges of the corruption of members, Congress in order to fortify itself in the exercise of the inquisitorial power provided by statute that a person who is summoned as a witness and who fails to appear or refuses to testify shall be punished by fine or imprisonment. The fact of contumacy was to be certified by the speaker of the House or the president of the Senate under seal to the district attorney of the District of Columbia. This act was upheld by the Supreme Court in the Chapman case [166 U. S. 661 (1897)]. Except for the single case of *Kilbourn v. Thompson* [103 U. S. 168 (1880)], in which the Supreme Court adopted the view that the contempt power of the House of Commons is judicial in character, derived from the time when Parliament sat as a high court, and is hence not exercisable by a legislature deprived in its creation of all judicial functions, the Supreme Court has affirmed the contempt power of Congress within the limits of its legislative power. The constitutional status of the congressional power of investigation was not finally settled until in *McGrain v. Daugherty* [273 U. S. 135 (1927)] the court held that the power of inquiry, with enforcing process, is an essential and appropriate auxiliary to the legislative function; that a legislative body cannot legislate wisely or effectively in the absence of information; that an inquiry to obtain information in aid of the legislative function, even though this purpose is not avowed in the resolution ordering it, is proper; and that a witness rightfully may refuse to answer where the bounds of the power are exceeded or the questions are not pertinent to the matter under inquiry. This decision was later reaffirmed in the *Sinclair* case [279 U. S. 290 (1929)].

Refusal to testify before a congressional investigating committee thus exposes a witness to three risks. If the committee takes no action against him, he will be left under suspicion. If it summons him to the bar of the house which created it, he may be committed to jail for contempt for a period not exceeding the duration of the current Congress; but he can obtain judicial review of his case through a writ of habeas corpus. If the house refers the case to the district attorney, he may be criminally prosecuted under the act of 1857. On the other hand, a rebellious witness may, like Mally S. Daugherty, escape punishment altogether, even if the highest court decides against him, through the prior termination of the life of the select committee whose questions he refused to answer.

Both the right of Congress to make legitimate inquiries without interference and the right of privacy of witnesses appear to need further protection, but only a voluntary reform in methods of conducting inquiries is likely to bring this about.

Before the Civil War inquiries were more frequently authorized by the House of Representatives; but since that time the Senate has been the more active body. This change has been ascribed to the control of party leaders in the House; to the fact that the House is more likely to be in political agreement with the president, especially during the first half of a term; to the freedom of debate and absence of effective closure in the Senate; and to its more frequent lack of political harmony, a result of the presence of the holdover members or of a group of insurgents.

In recent times congressional investigations have ranged over a wide area. Committees have delved into such matters of public concern as immigration; group, chain and branch banking; economic conditions; unemployment insurance; communist propaganda; railroad consolidations; lobbying; and post office leases. They have kept watch on the functioning of various federal bureaus, departments and establishments; they have inspected the affairs of private citizens and corporations; and they have inquired into such other diverse matters as the conservation of wild life, the condition of the Alaskan Railroad, Indian affairs, treaties with China, campaign expenditures, animal feeds and the price of shoes.

The frequency of American legislative investigations is probably traceable to the separation of powers set up by the framers of the constitution. Their plan was so to separate the legislative, executive and judicial branches of the federal government as to prevent the abuse of power by any one branch and thus to safeguard individual liberty. But this balance of power and dispersion of responsibility proved unworkable and precipitated a struggle for supremacy between the president and Congress which has continued to this day. Congress has steadily tended to encroach upon the executive and the executive has quite as steadily sought to resist such encroachment. In the absence of ministerial responsibility or of some arrangement which would bring the administration face to face with Congress the investigative activity of congressional committees has developed in response to the need for some means of holding

the administration to a strict accountability. With the development of an elaborate administrative mechanism at Washington and the great increase of powers exercised by the executive branch this need has become more and more insistent. Governmental efficiency, the protection of private rights and the execution of legislative policy as the will of the people demanded of Congress that it devise methods of supervising the administration of the law and executive conduct.

As a legislative function investigation has several distinct advantages. It is less unwieldy and cumbersome than impeachment and less inconvenient in its consequences than budget refusal. It provides a more effective control than mere resolutions requesting information "if compatible with the public interest," and it is a substitute for a system of administrative courts to protect the citizen from the arbitrary action of subordinate officials.

The attitude of the executive toward these inquiries has varied. Occasionally presidents and cabinet members, their reputations or conduct assailed, have asked for investigations. Such requests came from Alexander Hamilton and Oliver Wolcott as secretaries of the Treasury, from Postmaster General Gideon Granger, President Monroe and Vice President Calhoun and from Daniel Webster as secretary of state and William H. Crawford as secretary of war. More often, however, the executive has vigorously resisted committee inquiries. President Jackson vehemently repelled the attempts of the Wise committee to investigate his administration in 1837; President Buchanan protested against the methods of the House in the Covode inquiry in 1860; and President Coolidge criticized the procedure of the Couzens committee in its investigation of the Internal Revenue Bureau.

Any analysis of congressional investigations must take account of their political motivation. Political interests were apparent in the investigations launched against Jackson, in the inquiries which led to the impeachment of Johnson and in the frequent scandals of the Grant and Harding administrations. Party competition for the spoils of office has been reflected in repeated investigations of the customs houses, the Government Printing Office, the Bureau of Pensions and other branches of the civil service. Party affiliation makes for party prejudice and legislative committees do not always exercise their quasi-judicial duties impartially. The

members sometimes feel obliged to advance the interests of their party even at the expense of the facts and they rationalize their actions by identifying party interest with the general welfare. There exists a strong temptation to transcend the proper limits of a public inquiry and a great disposition to enter the domain of private life. The door is open to an indefinite search after evidence; and the suspension of the usual rules of evidence and of judicial procedure has often transformed the legislative committee into a tribunal of inquisition.

But if many congressional investigations have been partisan in their inception, methods and recommendations, disinterested observers generally agree that the results have justified their use. Their value arises from the exposure which they secure and the cautionary example which they set. Corrupt and inefficient officials may be removed, forced to resign or be disciplined; court action or impeachment proceedings may follow; the Senate may exercise its control over appointments more carefully; and Congress may transfer neglected duties to another department, create new agencies or even abolish an office. Hope of gaining a partisan advantage is less open to criticism when it results in the disclosure of some abuse, while the presence of a spirited opposition usually prevents the punishment or defamation of the innocent. But the repetition of practices once exposed indicates that party policies alone are no substitute for that eternal vigilance which successful democratic government demands.

The expenses of congressional investigating committees are met either by special appropriation, which requires a bill or resolution or a provision in an appropriation bill specifying a given amount, or out of the contingent fund of the House or Senate. In the latter case the amount is not specified, authorization being left to the Committee on Accounts in the House or to the Committee to Audit and Control Contingent Expenses in the Senate; disbursements are then made by the secretary of the House or Senate upon vouchers approved by the chairman of the committee. A joint committee requires either a joint resolution or payment in equal shares from the contingent funds. Complete data concerning the cost of congressional inquiries are not available. A total of \$214,660 was expended in connection with the principal investigations conducted by the Senate from March 4, 1923, to April 16, 1924. In 1926 Senator Warren, chairman of the Senate Appropria-

tions Committee, compiled figures showing that in the preceding sixteen years the Senate had spent \$1,383,500 on various inquiries. According to the annual reports of the public printer the expense of printing hearings of Congress in the fiscal years 1922 to 1924 was \$414,614. Although these amounts seem large, one commentator, calculating that 20,000 questions are asked annually in the House of Commons at a cost of a guinea apiece, concluded that over a period of sixteen years the cost of the daily question hour in Great Britain had considerably exceeded the cost of senatorial investigations.

In addition to legislative inquiries a familiar device for investigating public administration or problems of public concern in the United States is the permanent or temporary fact finding commission, usually authorized and financed by the legislature but appointed and conducted by the executive. Federal fact finding commissions made their modern debut in the United States with the creation of the Civil Service Commission in 1883; President Roosevelt made conspicuous use of them in dealing with coal, conservation, industrial relations and other problems; and several important commissions with investigative and other functions were created during the Wilson administration, notably the Federal Trade Commission, the Federal Reserve Board, the United States Tariff Commission, the Federal Board for Vocational Education, the United States Shipping Board, the Railroad Labor Board and the Federal Power Commission. Expert commissions to investigate the tariff and other issues were promised by both presidential candidates during the campaign of 1928. In his first two years President Hoover appointed twenty-nine ad hoc commissions and committees, either upon his own initiative or by authorization of Congress, to deal with such matters as ocean mail contracts, law enforcement, agricultural marketing, child health, conservation of the public domain, wages and building construction, social trends, policies in Haiti, home building and ownership, employment, drought, timber conservation and illiteracy. A commission of congressmen and cabinet members studied methods of equalizing the burdens of war in 1931. In some quarters "government by commission" has been praised as a scientific approach to the solution of public problems; in others it has been condemned as a device for dodging issues.

Administrative investigations are financed either from direct appropriations by Congress,

as in the case of the National Commission on Law Observance and Enforcement, or entirely by private contributions, as in the case of the President's Committee on Social Trends. Some agencies, such as the National Timber Conservation Board, receive both public and private support.

In all departments of government there are agencies charged with making investigations or entrusted with administrative tasks for the performance of which investigations are essential. Large numbers of inquiries into matters of social significance are constantly functioning under governmental auspices. Congressional investigations of executive expenditures may have become less necessary since the establishment in 1921 of the office of comptroller general with supervisory and inquisitorial powers, although his influence over the departments as an agent of Congress was impaired by the Supreme Court decision in the Myers case [272 U. S. 52 (1926)].

Since 1910 temporary economy and efficiency commissions with limited funds have been established from time to time by law in many states to investigate the administrative organization and methods of the state government as a whole or of particular departments or institutions. These commissions have consisted of members of both houses of the legislature or of outside specialists or of both. The value of their work has varied. During the sessions of 1929-30 a total of 251 investigations preliminary to law-making were authorized by state legislatures. Considerable investigative work is also carried on by state governments through the research activities of industrial, railroad, taxation and other permanent commissions, banking and insurance departments and departments of education. In New York the governor is authorized at any time, either in person or by one or more persons appointed by him, to examine and investigate with enforcing process the management and affairs of any department, board, bureau or commission of the state.

Official agencies for investigating the administration of particular cities have been created in a few instances. Examples are the Boston Finance Commission (1907-09), authorized by the City Council and appointed by the mayor; the Permanent Finance Commission of Boston, established by law in 1909; the Chicago Commission on City Expenditures (1909-11) and the Efficiency Division of the Civil Service Commission of that city (1909-15); the Milwaukee Bureau of Economy and Efficiency (1910-12) and Bureau

of Municipal Research; the commissioner of accounts of New York City; and the Efficiency Department of Los Angeles (1914-17). The financial investigations of city comptrollers, as in Philadelphia, and the studies of police departments and municipal courts by local official crime commissions, as in Baltimore, also deserve mention. The legislature of New York state has several times instituted investigations into the government of New York City, the most notable being the Lexow investigation of 1895 and the Hofstadter investigation of 1931-32. Governmental inquiries in American cities, however, are infrequent, their place being taken by the unofficial investigations of bureaus of municipal research.

On the European continent the French assemblies were the first to follow the lead of the House of Commons and to assume the power to conduct investigations of the administration and to obtain information on which to base legislative policy. The commissions of the first revolutionary assemblies functioned in a way as permanent agencies of inquiry into the various branches of administration. The constitution of the Year III, however, did not mention this right of the legislature. After the Restoration there were repeated proposals for inquiries and some successful resolutions; during the July Monarchy the right of investigations was freely admitted. The right to conduct *enquêtes* has been tied up in France with parliamentary government, ministerial responsibility and the right of interpellation. Thus with the coup d'état of Louis Napoleon in 1852 all of these were abolished. Under the Third Republic the right of investigation was again successfully claimed by the legislative bodies, although there was neither constitutional nor statutory regulation of the *enquête*. *Enquêtes* are generally ordered by simple resolution, in the case of investigations of administration generally only after a commission has considered the resolution and has reported on it to the house; they can also be instituted by the adoption of an *ordre du jour motivé* to that effect at the close of the debate on an interpellation. The legislative committee cannot coopt non-parliamentary members unless authorized by the house. The right of legislative committees to require the attendance of witnesses, the production of papers and testimony under oath was not clearly established until a statute to that effect was passed in 1914. The expenses of the *enquête* are paid from the budget of the house authorizing it. Pierre lists twenty-

five investigations conducted by the Chamber of Deputies between 1832 and 1892 and five by the Senate between 1876 and 1891. Both during and since the World War the *enquête* has aided in securing more effective legislative control of the executive. It has been used by no means as frequently in France as in the United States, however, and as a method of control of administration it is distinctly less important than the interpellation.

While the legislative power of investigation was assumed in England, the United States and France as an essential corollary of the general legislative powers, the constitutions of many European countries provide specifically for this power. The earliest constitution of this type was probably that of Saxe-Weimar of 1816, which provided that the assembly of estates could set up investigating committees when it thought them desirable. Belgium made a similar provision in article 40 of the constitution of 1831. The Netherlands gave the right to the Second Chamber only in its constitution of 1848 and carefully regulated the exercise of the power in a law of 1850, but in the constitutional revision of 1887 the power was extended to the First Chamber as well. The right of legislative investigation was asserted in a number of German constitutions, including the Frankfort constitution of 1849; the Prussian constitution of 1850 reluctantly granted it in principle but left the details to subsequent legislation, which was never enacted. When legislative investigations were inevitable, special acts were passed applicable only to the particular investigation concerned; effective opposition by the government limited such investigations to four between 1850 and 1864; after the latter year the provision was practically a dead letter. The imperial constitution of 1871 contained no provision for legislative investigations; when such investigations were unavoidable they were as in Prussia provided for by special acts. Such were the acts establishing the tobacco inquiry of 1878, the stock exchange inquiries of 1892 and 1905 and the armaments inquiry of 1913. Thus although Germany had precedents for legislative investigations it had no effective provision for them until after the revolution of 1918. The Weimar constitution provides for legislative investigations under certain circumstances on the demand of one fifth of the members of the Reichstag. The constitutions of the Lander also provide for such investigations on the demand of from one fifth to one third of the members of the Landtag.

The legislative investigation in Germany is thus intended to serve in addition to its other functions as a protective weapon for minorities. By 1925 seven investigations had been authorized and in 1926 a committee was established to investigate the conditions of production and marketing in German industry; this last committee has issued a number of valuable reports. Several other European post-war constitutions established the right of investigation, but it has not played an important part in the government of the states concerned.

In the Rabkrin (Raboche-Krestyanskaya Inspektsiya), or Workers' and Peasants' Inspection, the Union of Soviet Socialist Republics has a powerful organ of investigation. The Rabkrin is one of the commissariats represented in the Council of People's Commissars of the Soviet Union, the administrative agency of the Central Executive Committee, which in turn constitutes the supreme legislative and executive body of the U. S. S. R. The Rabkrin is composed of the people's commissar for Workers' and Peasants' Inspection chosen by the Central Executive Committee; three assistant chairmen, a secretary and a collegium of thirteen members subject to confirmation by the committee; four central sections for supervision of all inspection, improvement of government apparatus, bookkeeping and accounting and general administration; and information, legal and complaint departments. It has also local branches and each member republic has its own commissariat. This agency investigates all organs of government—administrative, economic and social—in order to check results and to combat red tape and bureaucracy; and it makes recommendations to the central government for simplification and increased efficiency. The Rabkrin proceeds on its own motion and also receives complaints from groups or individuals against Soviet officials or institutions. During 1930 and 1931 its Joint Complaint Bureau investigated 43,000 out of 100,000 complaints, most of which were against the *kulaki*, the administration of village soviets and misuse of office by politicians. Public and private hearings are held throughout the country and the Rabkrin has power to question the management and employees of any Soviet institution and to demand access to all books, accounts and documents necessary to its investigations. Its recommendations, which may involve removal of officials, reduction of staff, lowering of prices or reorganization of an industry, are subject to ratification by the Central Executive Committee.

An increasingly important position in the development of governmental investigations has been taken by the League of Nations and the related International Labor Organization. Through its technical organizations and permanent advisory committees, linked up with sections of the Secretariat, as well as through special ad hoc committees the League has undertaken a great many inquiries ranging over a very broad field. Characteristic of the permanent investigative organs of the League is the Permanent Mandates Commission, which maintains constant supervision over the carrying out of the terms of the mandates. The ad hoc commission appointed by the League to investigate the Sino-Japanese conflict in Manchuria in 1931 is reminiscent of earlier international commissions of inquiry appointed to determine disputed questions of fact in international controversies. The inquiries of the International Labor Organization have been concerned primarily with the international aspects of the problems of labor and industrial relations, largely preliminary to the drafting of recommendations or conventions for international action. Although many international investigations have functioned through direct oral examination of witnesses at the place involved in the investigation, such examination has not been based upon any power to compel testimony and the production of papers. Most international investigations have been conducted on a statistical or documentary basis rather than by means of oral hearings.

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See: LEGISLATIVE ASSEMBLIES; EXECUTIVE; SEPARATION OF POWERS; CHECKS AND BALANCES; CABINET GOVERNMENT; CONTEMPT OF COURT, CORRUPTION, POLITICAL; CONTESTED ELECTIONS; IMPEACHMENT; PUBLIC OPINION; INTERPELLATION.

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**INVESTITURE CONFLICT.** The subject of the investiture conflict, which raged, although not continuously, from the last quarter of the eleventh century until 1122, was the place of the secular authority in the appointment of ecclesiastical officials. While the controversy frequently tended to turn upon the right of the secular authority to give the pastoral staff and the episcopal ring, the spiritual symbols of ecclesiastical office, the important question at issue was the degree of control which the secular authority might exercise in the actual appointment. The investiture conflict may be regarded as the first phase of the sustained struggle between the spiritual and temporal powers which occupied western Europe for some 250 years after the accession of Pope Gregory VII (*q.v.*) in 1073. In the course of the investiture conflict other and more profound issues as to the relations of the two powers were raised. It is nevertheless true that it was this problem which originally brought the two powers into violent collision and made their relation one of mutual animosity. In the ninth and tenth centuries and in the first seventy years of the eleventh century the relations of the two powers were very complex and, at times, stormy. The temporal power continually wielded great influence in the ecclesiastical sphere, while the spiritual power exercised some and often considerable control over temporal affairs. This condition although partly contingent upon historical circumstances was a natural consequence of the difficulty in the practical application of an abstract principle—the Gelasian theory that each of the two great authorities was independent within its own sphere. In spite of the overlapping the actual relations of the two powers prior to the investiture conflict were on the whole sympathetic and dominated by a cooperative spirit. It is only by a consideration of the earlier conditions of episcopal appointments that the nature of the investiture conflict can be understood.

On the particular question of the appointment of bishops and abbots there was in the ninth century general agreement at least in principle. The typical view may be found in the *Epistles* (xix: 1) of Hincmar, archbishop of Reims, who

was the most outstanding churchman of northern Europe in the latter part of the century. He was clear that while having no arbitrary authority in appointing bishops the prince nevertheless had his rightful place, along with the clergy and laity of the diocese and the metropolitan and comprovincial bishops, in such appointments. In the tenth and the first part of the eleventh century the principles of Hincmar were normally recognized as just. Some writers of the time seem to insist upon the rights of the clergy and laity of the diocese to elect; others require the authority of the prince; but in the main there was little serious intention of ignoring what were regarded as the reasonable claims of both. The best evidence of this is the fact that in the tenth century writings of Gerbert, archbishop of Reims (afterward Pope Sylvester II), and in those of Peter Damian, one of the most famous representatives of the reform party of the eleventh century, it is easy to find some phrases which apparently favor the predominant place of the electors and others which seem to attribute chief weight to the prince.

The explanation of this attitude as well as the later emergence of conflict is to be found in the history of the times. The decay of the Carolingian civilization in the ninth century as a result partly of its own internal weakness, partly of new barbarian invasions, had been accompanied by a corresponding decline of the ecclesiastical life and order. Almost simultaneously with the revival of the religious life, which began in the tenth century and found its most important center in the monastery of Cluny, the political recovery of Europe was inaugurated by the reconstruction of the Holy Roman Empire by the German king Otto I. These two movements proceeded hand in hand until the middle of the eleventh century; and it was no doubt partly for this reason that even the ecclesiastical reformers tolerated the exercise of a very great authority on the part of the secular power in ecclesiastical appointments. There was another and very important reason for the development of this authority. With the growth of feudalism in the tenth century the great administrative offices of the empire had increasingly tended to become hereditary, and the emperors had come to look to the bishops with their great territorial jurisdictions as a counterbalance against the feudal nobility and as men to whom they might safely entrust great political power, provided of course that they themselves might exercise a commanding influence in appointing them.

While perhaps not trustworthy in all details the account given in Anselm's *Gesta episcoporum leodiensium* of the appointment of Wazo, one of the most illustrious of the reforming churchmen, to the bishopric of Liège in 1041 provides a good illustration of the typical and accepted method of appointing ecclesiastics in this period. After having been unanimously elected by the clergy and laity of the diocese Wazo protested that his election would displease the emperor Henry III. His objections were overruled and he was sent with a letter of the diocese and the pastoral staff to meet Henry at Ratisbon. In the deliberations of the emperor and bishops and princes of the court much opposition was manifested and it was urged that a bishop be appointed from the clergy of the royal chapel. But the active support of the archbishop of Cologne and the bishop of Würzburg finally secured the imperial consent to the choice of the diocese.

Not until the death of Emperor Henry III in 1056 did serious friction develop between the two authorities. Henry III had cooperated with the reformers in the movement against the more flagrant ecclesiastical abuses, especially the vice of simony, by which church offices were constantly bought and sold. But after Henry's death the temporal power in the empire, as in France, not only ceased to support reform but became the active cause of demoralization. Whether or not the charges brought against the administration of the empire during the minority of Henry IV and against Henry himself after he had assumed the reins of government were wholly justified, it is evident that simony was rampant both in France and in the empire.

The popes from Leo IX (1048-54) had taken energetic measures to suppress it. When Hildebrand became pope as Gregory VII in 1073 he continued their policy but gave it a new direction. Previous popes had dealt mainly with the simoniacal clergy; Gregory turned the attack against the secular authorities as being mainly responsible for the abuses. It was this which led directly to the great conflict.

The conflict first arose in France. In letters of 1073, 1074 and 1075 Gregory charged the French king with the most outrageous simony and threatened the severest penalties of the church unless he reformed. It was not until 1075, and then apparently in connection with the dispute over the appointment of the archbishop of Milan, that Gregory in a synod at Rome directly forbade Emperor Henry IV to bestow bishoprics and any layman to give investiture. The precise

terms of this decree are not known but those of the decree issued by the Roman council of 1078, at which the condemnation of lay investiture was repeated, have been preserved (Gregory VII, *Register*, vi: 5 b). The Roman council of 1080 added that any person receiving and any emperor, king or secular authority giving such investiture was excluded from the grace of St. Peter and forbidden to enter a church. As the proper mode of appointment it prescribed election by the clergy and people with the consent of the Apostolic See or the metropolitan (Gregory VII, *Register*, vii: 14 a).

While the issue was thus set, considerable ambiguity still surrounded the meaning of the prohibition. Just as the party of reform had not generally or clearly maintained that the temporal authority should have no place in appointments, but only that it should not have an arbitrary right to override the wishes of the people and clergy or to "invest" with the sacramental symbols of spiritual office and power (*Adversus simoniacos*, III: 6, by Cardinal Humbert of Silva Candida), so even Gregory VII seems in letters of 1077 and 1079 to recognize the right of the French king and of Rudolph of Swabia to some voice in episcopal appointments (*Register*, v: 11, and *Epistolae collectae*, 26).

This vagueness, only gradually clarified, is reflected in the controversial tracts which the prohibition evoked in the succeeding years. Although sometimes seeming to deny the secular authority any share in appointments the supporters of the papacy, whose position may be illustrated by the *Libellus contra invasores et symoniacos* (1097) of Cardinal Deusdedit, laid emphasis upon the abolition of the arbitrary right of the prince and upon such practical evils as the prevalence of simony and the congregation of place hunting clerics at the royal court, which according to Deusdedit arose from dependence upon the prince (prologue and cols. 1, 15). During the first phase of the controversy they avoided discussion of the secular position of ecclesiastical officers, which the protagonists of the imperial party stressed. Prominent among the latter was Wido, bishop of Ferrara, who in *De schismate Hildebrandi*, written probably in 1086, foreshadowed the later solution of the conflict by drawing a distinction between the two aspects of the bishop's office. While justifying lay investiture on the ground that the bishop's secular power and possessions must be granted by the prince, Wido admitted that his spiritual powers came through the ministry of other bishops.



In the closing years of the century the beginnings of a mediating tendency can be recognized in the position of Ivo, bishop of Chartres, a great canonist, one of the most important churchmen in France and a convinced supporter of the popes. In his *Epistola ad Hugonem* and *Epistola ad Isacerannum* Ivo developed the view that the question of investiture should be conceived as a matter not of eternal law but of what may be called an administrative order and that the granting of the temporalities was clearly the right of the prince. Indication of a similar mediatory tendency in the opposite camp is given by the anonymous *Tractatus de investitura episcoporum*, written probably in 1109 by a protagonist of the imperial party.

Progress toward settlement was, however, interrupted in 1110 by the startling proposal of Pope Paschal II to solve the difficulty by commanding the bishops and abbots to surrender their regalia, that is, their political authority and feudal lordships and possessions, if in return the temporal power would admit the freedom of election and give up the claim to investiture. It is tempting to relate this offer to some general movement of revolt against the secularization of the church through the immense development of the wealth and political position of the bishops and great abbeys—to such a movement as seems to have been represented later in the century by Arnold of Brescia and is reflected in the writings of so pious a churchman and so devoted an adherent of the papacy as Gerhoh of Reichersberg. But unfortunately little evidence has been preserved of the considerations prompting Paschal's action. His proposals were rejected if not by the whole episcopal body at least by those German and Italian bishops who were in Rome with the pope and Emperor Henry V in 1111, and they were condemned in emphatic terms in the *De honore ecclesiae* of Placidus of Nonantula. Following the failure of this solution, Paschal, who was in the power of Emperor Henry V, was reluctantly forced by the devastation of Rome and of the surrounding country and by the imminence of schism to issue a *privilegium* providing that bishops and abbots should be freely elected with the consent of the prince and that royal investiture with the ring and staff be a prerequisite of consecration. The church as a whole, however, violently repudiated the pope's temporary submission and at a council held in the Lateran in 1112 Paschal had to rescind his *privilegium*.

In France and in England an understanding had already been reached, although the exact

process and terms of the settlement with these countries is not known. It seems clear, however, that the French king and his great vassals had gradually accepted the papal prohibition of investiture with ring and staff and without renouncing their privilege of confirmation had recognized the principle of free election. In England the controversy between Anselm and Henry I had ended during the first decade of the century with similar concessions on the part of the king, who, however, continued to exact the oath of allegiance from the bishops. But no progress toward a solution of the major conflict between papacy and empire was made until after the death of Paschal's successor, Gelasius II, in 1119. The negotiations were then resumed, at first by representatives of the French church. When these broke down they were renewed under the more authoritative influence of the German princes, who at Würzburg in 1121 expressed their determination to achieve a settlement by which the empire and the church should both retain their rights.

The result was a direct correspondence in 1122 between Pope Calixtus II and Emperor Henry V. In September, 1122, Henry and the German bishops met the papal legates at Worms, and the conflict was finally terminated by the Concordat of Worms. The concordat provided that the churches of the empire should have the right of free election and consecration, and that the emperor should renounce all right to invest with the ring and staff. The papacy conceded that all elections within the German kingdom should be held in the emperor's presence and that in the case of disputed elections the emperor with the advice of the metropolitan and bishops of the province should give his assent to the wiser part (*saniori parti*) of the electors; that the bishop or abbot elect should receive the regalia from the emperor before consecration and that in those portions of the empire outside the German kingdom the bishop or abbot should receive the regalia within six months after his consecration, except in the case of those sees or abbeys belonging to the Roman church.

In recognizing both the claim of the church to freedom of election and the reasonable right of the temporal power to some voice in determining ecclesiastical appointments, which in fact held so great a place in the political life of the Middle Ages, the concordat represented substantially the acceptance of the principles of the mediating party. The concordat secured peace between the church and the empire for thirty years. When

with the accession of Frederick Barbarossa in 1152 the two authorities again became ranged against each other, different issues were at stake. There seems to be evidence of varying interpretations of the settlement even during the interim of peace, and during the reign of Frederick II in the thirteenth century the question of ecclesiastical appointments grew once more acute. But on the whole the broad principle of the concordat was fully recognized. That principle constituted the application of the dualistic theory of the relation of the two powers. The investiture conflict did not disturb the normal validity and acceptance of this theory. It is, however, true that in holding the temporal power responsible for what he conceived to be its part in spiritual corruption and in evoking every sanction that the church had ever claimed to support his case, even to the extent of excommunicating and then deposing the emperor, Gregory VII had made a practical application of his spiritual authority which involved revolutionary consequences. Thus, while the conclusion seems clear that the investiture conflict did not imply an official assertion of any theoretical authority on the part of the spiritual power in temporal affairs, it did lead to actual claims to interference with the temporal power, which although they had little practical importance in the twelfth century could furnish a precedent for the great struggles between church and state, in the thirteenth and fourteenth centuries.

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See: RELIGIOUS INSTITUTIONS; PAPACY; HOLY ROMAN EMPIRE; CLUNIAN MOVEMENT.

Consult: For source material: Hincmar's *Epistles in Patrologia latina*, ed. by J. P. Migne, vol. cxxvi, *Gesta episcoporum leodiensium* in *Monumenta Germaniae historica*, Scriptores, vol. xii, p. 134-234; Gregory's *Epistolae collectae in Bibliotheca rerum germanicarum*, ed. by P. Jaffé, vol. ii, and his *Register* in *Monumenta Germaniae historica*, *Epistolae selectae*, vol. ii; *Adversus simoniacos* and *De schismate Hildebrandi* in *Monumenta Germaniae historica*, *Libelli de lite*, vol. i; *Libellus contro invasores*, *Epistola ad Hugonem*, *Epistola ad Iosceranum*, *Tractatus de investitura episcoporum* and *De honore ecclesiae* in *Monumenta Germaniae historica*, *Libelli de lite*, vol. ii.

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INVESTMENT is the act of directing the employment of funds into capital or into claims to income. In the broadest sense investment includes not only the employment of funds in the maintenance and increase of capital goods from which a present or future money income is to be derived but also the purchase of durable consumption goods from which the income stream is of a psychic rather than a pecuniary nature. In the usual business interpretation of the term, however, such goods do not represent investments. Moreover in business terminology investment is regarded from an individual point of view rather than from the point of view of the community; that is, it is regarded as the transformation of current income into claims to future income rather than as a transfer of savings to those who can make the most productive use of them with a resulting increase in the capital and income producing power of the community. During 1918, for instance, the investments of the American people amounted to about \$22,000,000,000, yet the net loss in the physical capital of the country through war activities amounted to \$2,000,000,000. While some capital was destroyed and the social income stream lowered, certain individuals went through a process of investing funds and held higher claims to future income in the form of government promises to pay.

The maximum available for investment is the total savings, or the amount by which money income exceeds money expenditure on current consumption. Saving is dependent upon a large number of factors, among the most important of which are the natural resources of a country, its efficiency of labor, its stability of government, its distribution of wealth, the thrift, foresight and education of its people, and the development of institutions encouraging the accumulation of savings and facilitating their gainful employment. These factors affect the amount of saving because they influence the ability and willingness of a people to save. Thus the larger the natural resources of a country and the greater the efficiency of its labor, the larger is the excess of income over the amount required for subsistence and the greater is the ability to save

for the country as a whole. For a single individual the ability to save is a function of the size of his income relative to the subsistence minimum; hence, other things being equal, the more unequal the distribution of wealth in a country, the greater its ability to save. Willingness to save depends very largely upon the established mores. For people with very large incomes willingness to save is a factor of less importance, as their saving is largely an automatic accumulation of unspent income. Even a certain amount of saving by the mass of the population may not be the result of a deliberate decision, particularly in countries with a strong commercial banking system. Through the creation of new purchasing power, which is transferred in the form of credit to producers, the banking system increases the ability of the producers to draw upon the resources of the community, reducing ipso facto purchasing power in the hands of consumers. In highly developed industrial countries corporate savings, or the amount of corporate net earnings which are not distributed to the stockholders in the form of cash dividends, form a significant part of total savings. The larger the net income of a corporation relative to the outstanding capital stock and the more promising the opportunities for expansion in the business in which the corporation is engaged or in related lines of business, the more likely is the corporation to retain a part of its net earnings. Even in a capitalist society saving may be undertaken also by the government when it employs the proceeds of taxation for public works and other productive purposes; whether the total savings of the country are increased thereby depends of course upon the uses to which the individuals would have turned that part of their income which is appropriated by the government through taxation. Apart from other considerations the total amount of savings varies with changes in general business conditions. Corporate savings depend upon the movement of business activity; they are largest in years of prosperity and smallest in years of depression. Individual savings, which depend on the size of current income, likewise vary although less widely than do corporate savings. Estimates have placed the amount of savings for the United States in the year 1924, a fairly representative year, at about one sixth of the national income and for the United Kingdom at about one eighth of its national income.

Saving and investment are not coterminous. At all times, at some to a greater extent than at

others, a certain amount of saving takes place which does not result in immediate investment. Savings may be hoarded because investment opportunities are scarce or do not offer sufficient security, as in a period of financial uncertainty. Hoarded savings are in no sense investments, since the term investment implies the employment of funds in a manner which gives to the investor a claim to income either in the present or in the future. Savings which are not hoarded may be employed in a manner which is essentially different from genuine investment; they may be used for speculation—for the acquisition of goods which are expected to appreciate and which represent from the point of view of the purchaser an anticipated increase in capital value rather than a more or less permanent claim to future income.

There are certain general considerations which investors of all types take more or less into account: yield and appreciation possibilities, the ability readily to dispose of the investment (marketability) and safety. These are to a certain extent mutually incompatible—a high degree of safety, for instance, goes generally with a low yield—and the investor will therefore tend to emphasize one of these desiderata at the expense of the others. Even where investments are diversified the composition of the investment portfolio will reflect the bias of the investor with reference to each, of these investment principles.

Apart from the purposes which he has in view the individual's choice of investments will be affected by the size of his income and his knowledge of investments. An individual with small income who desires to save for emergency and for competency in old age may find it difficult to obtain the diversification in investments which he desires; consequently his savings may be entrusted to a savings bank in the form of deposits or to an insurance company in the form of premium payments. Other individuals with greater ability to save may place a portion of their savings with banks and insurance companies and invest the rest in stocks, bonds and mortgages.

Where the individual's knowledge of investment opportunities is limited and his capital large enough to warrant the cost, he may use the services of investment counsel, which will help him to obtain such diversification of investment as is best suited to his needs; or he may entrust his savings to financial institutions which make it their business to invest the savings

of others in such a manner as they deem advisable, subject to certain restrictions imposed by public authority. The individual, however, will still have to choose among the various types of investing institutions. These include among others savings banks, which receive savings too small in amount to obtain the safety made possible by diversification; trust companies, which handle in a fiduciary capacity the funds and estates of individuals; and investment trusts, reaching that part of the investing public which desires diversification, higher yields than might be obtained elsewhere and opportunity for capital appreciation. Other investing institutions are building and loan associations and to a certain extent life insurance companies.

From the social point of view an act of investment results in the addition to the capital equipment of the country, unless the investment is made abroad. In primitive societies capital equipment is maintained and increased ductly —by turning labor that could be spared from the production of consumer goods to the production of equipment. With the development of the money economy the process of capital formation becomes more complicated: the funds for the purchase of capital goods produced by specialized industries are obtained from individual savers. Before the industrial revolution investor ownership took the form of a direct ownership of productive wealth, a form which still predominates in the less industrialized countries. With progressing industrialization this older form of direct ownership has been increasingly displaced by indirect ownership through stocks, bonds and other securities. The value of outstanding securities in the United States in recent years may roughly be estimated at one third to one half of the national wealth; in England it was estimated at 60 percent of the national wealth for 1918.

In an individualistic society the investor is left more or less free to decide which of the various enterprises bidding for his funds are to increase their power of commanding capital goods. The correctness of his decision will be reflected in the future market value of his investment; thus if the industry in which he invested is overexpanded relative to the demand for its product, his investment will depreciate. Under these conditions a certain amount of overinvestment in some industries and capital shortage in others cannot be avoided. In a planned society, where the flow of savings into various

industries is regulated by a central authority, much of this maldistribution could presumably be eliminated except for some radical and unexpected shifts in consumer demand.

In a developed capitalist society the judgment of the investor, whether he acts directly or through an investing institution, is directed by the machinery of the organized investment market, the two important constituents of which are the investment bank and the stock exchange. The investment banker acts as a middleman between those who require funds and those who have a supply of funds to offer. His profit is obtained from the margin between the price at which he underwrites the issue and the price at which he disposes of it to the public. Large corporations, to the extent that they seek capital not furnished through reinvestment of earnings, as well as states and municipalities normally satisfy their capital requirements through the services of the investment banker. The financing of hotels, office buildings and apartment houses is frequently done through the investment banker by the issuance of bonds secured by a mortgage on the property. Capital for the purchase and erection of homes, in so far as it is not obtained from building and loan associations, is raised by special companies which deposit mortgages on the property with trustees and issue bonds against this collateral; mortgage companies have developed in the United States only in recent years. Many financing programs, however, are not arranged through investment banking institutions. The demands of a national government are generally handled through the agency of a central bank, which in turn enlists the cooperation of investment houses. A few of the larger corporations, particularly certain public utility companies which have a wide and direct contact with the public, do a part of their financing without the mediation of the investment banker. This is likewise true of concerns whose capital requirements are relatively small and in which investors in general have little interest. In some European countries the functions of investment banker for industry are assumed by ordinary banks directly or through a subsidiary finance company, and loans on mortgages for the construction of homes and for agricultural uses are raised through mortgage banks owned by the public authority or by a cooperative association.

Just as the raising of capital funds is facilitated by the investment banker, so the transfer of capital is effected by security brokers who act

as intermediaries between buyers and sellers of securities. The purchase and sale of securities through brokers is facilitated by stock exchanges whose members enjoy the privilege of transacting business on the exchange. Only securities listed by the stock exchange committee can be traded on the exchange; securities with restricted markets are not approved for listing and are dealt in "over the counter" trading by specialized bond houses and similar institutions. Although the mere listing of a security does not necessarily assure it a ready market, since some securities are not actively traded, nevertheless a security which can be sold on the exchange is as a rule more marketable than an unlisted security and is for that reason preferable from the investor's point of view. Thus by improving the marketability of securities the stock exchange facilitates the raising of capital. An extremely important consequence of marketability due to the continuous functioning of stock exchanges is that a part of the investment needs of the country can be satisfied by the employment of commercial bank funds, which flow into the investment market as the result of loans to investment banks and brokers and as the result of direct investments in stock exchange securities by commercial banks.

One of the most important classes of securities for which market facilities are relatively inadequate is real estate mortgages. Individual real estate mortgages differ fundamentally from mortgage bonds in that the holder of the individual mortgage proceeds alone in the execution of his rights in case of default, while the holder of a mortgage bond proceeds through the intermediation of a trustee. The absence of a centralized market for real estate mortgages has been due to the nature of these mortgages. They often cover small pieces of local property, the value of which cannot readily be determined by scattered investors, and they may be of inconvenient denominations; moreover they require a considerable amount of attention with respect to maintenance of tax payments on the property, the regular payment of insurance and other details. It is to make these mortgages a more desirable investment that mortgage companies have developed which deposit individual mortgages with trustees and issue real estate mortgage bonds against this collateral.

Investments in stocks, bonds and mortgages are investments in the permanent capital of a country; from the point of view of the community the process of liquidating these investments

is normally a very slow one: the value invested in capital goods can be recovered only bit by bit from the sale of the commodities in the production of which they are employed. But the individual investor who wishes to recover his principal does not need to await the more or less distant maturity date in the case of contractual obligations, such as mortgages and bonds, or the liquidation of the concern in which his investment has been placed; he may sell his securities if there is a market for them and thus transfer his investment to others. The sale of securities at the price which was paid for them is, however, uncertain.

Investors who are particularly desirous of liquidity usually find that a portion of their funds may advantageously be placed in short term investments, such as commercial paper, trade and bank acceptances and demand or time loans against stock exchange collateral. These represent short term loans, usually for working capital purposes in contrast to fixed capital purposes, which are in many cases self-liquidating. Commercial banks, whose obligations are in the form of deposits payable on demand or at short notice, find it desirable to employ part of their funds in such forms. In the marketing of these loans certain specialized businesses have developed, such as acceptance and commercial paper houses.

With the increasing complexity of the investment market the apportionment of savings between industries has become more and more dependent upon the network of financial institutions. Investment banks are in a position to accept or reject applications for the flotation of securities which are brought to their attention. Commercial banks determine whether deposits left with them shall be loaned to particular enterprises. These institutions act as intermediaries between those who need capital and those who have capital to offer; but they are organized as businesses for a profit which is regulated by the margin between the price at which they furnish capital and that at which they obtain it. They will therefore direct savings not into industries which are in the greatest need of capital from the point of view of the community but into those industries which allow them the largest profit margin. The latter of course depends also on the price at which securities can be sold to investors. Assuming that the investors are well advised, they will adjust the price which they pay to the profit prospects of the industry in question; and these are determined

by the demand of consumers for the goods and services of the industry. Ultimately therefore the apportionment of savings among industries is regulated by the distribution of demand for their products; by and large investments will tend to be placed in capital goods which are calculated to produce commodities demanded by consumers. But the immediate and direct control of savings is in the hands of the institutions constituting the framework of the investment market, while the part played by consumers is an indirect one and subject to many qualifications.

The fact that an overwhelming share of the new capital for industry is supplied not directly by the investors but through the investment market means also that the investor is removed from direct control over the use to which his investment is put. A person who employs his savings in a small local enterprise, even if it is only in the form of a long term loan, retains a great deal of influence over the policy of the firm; but if he invests them in securities he acquires nothing more than a potential claim to income. Control of the physical objects on which the investor's money has been spent and of the business opportunities arising from the combination of the physical properties into a going concern is vested proximately in the management. Where the management is not a self-perpetuating group subject to no real control, as it is sometimes in large corporations whose stock is widely distributed, the control over it is likely to be in the hands of a small group of people who own only a very minor part of the total investment. For investor control there is substituted sometimes continuous control by the investment banker, one of the functions of which is to assure sound management for the benefit of the investor; this purpose, however, is often submerged by other aims which the investment banker is likely to regard as important, such as the exclusive handling of the financing operations of the concern and the effective coordination of the activities of the concern with those of others similarly controlled by the banker or by the group of financial capitalists with which he is affiliated.

The obtrusion of the investment banking machinery between the investor and industry tends also to accentuate the cyclical fluctuations in the flow of savings into investment channels. When the market for securities is good, the investment banker generally attempts to take advantage of this fact by encouraging industrial

concerns to a generous issue of securities; in periods of depression, on the other hand, the pessimism prevailing in the investment market discourages borrowing even for legitimate expansion. Adequate control over the flow of savings into investment channels might go far toward moderating the alternate periods of extreme prosperity and depression so characteristic of modern capitalist economy. Central banks in all countries have been granted broad powers designed to control money rates and the volume of credit, with the ultimate purpose of moderating the course of industry and of commodity prices. If through this means price and business stabilization could partially be achieved, investment losses through changes in the purchasing power of money might be reduced.

In the formative period of capitalist economy during the late eighteenth and the early nineteenth century investment institutions were subject to little regulation by the state. Under the influence of the philosophy of natural liberty and of natural rights it was assumed that the maximum economic welfare of the group is attained through the free and unhindered play of individual self-interest. As wealth and income increased, industrial organization assumed a predominantly corporate form; the investment market became more complex and the attainment of adequate knowledge by the individual of the industries and companies in which his savings were placed became increasingly difficult. His losses, for which poor judgment was primarily responsible, were increased by mismanagement and fraud on the part of certain financial institutions. Consequently the efficacy of the principle of *laissez faire* as applied to the investment market was questioned and, while the fundamental concepts of the earlier system remained, regulatory measures designed to protect the individual were enacted. Commercial banking became subject to regulation early in the nineteenth century. Insurance companies, building and loan associations and savings banks have similarly come under state supervision. Laws have been enacted to prevent the sale of fraudulent securities, and the issue of securities has been controlled through the regulation of corporate business. With the organization of the investment market its representative organs have imposed a considerable amount of control on the activities of the individual investment banking institutions. So vitally does investment affect the individual, state and world economy that there are tendencies for the whole field to be

subjected to greater scrutiny and regulation than have heretofore prevailed. The relation of foreign investment to tariffs, to trade balances and to the international flow of gold has received increasing attention since the World War, particularly during the depression beginning in 1929. Some form of public control over security issues to prevent overinvestment in fixed capital by private enterprises has been strongly urged in recent years, but so far such control has been fully exercised only during the World War and in the post-war period in Russia, where the entire industrial system operates according to plans laid down by the government. Control by public authority over the investment in and the import of capital from foreign countries has been more common, but it has been exercised with a view more to the political consequences of capital migration than to the economic effects of over- or underinvestment.

LIONEL D. EDIE

*See:* SAVINGS; ACCUMULATION; HOARDING; SPECULATION; INTEREST; PROFIT; RENTIER; ENDOWMENTS AND FOUNDATIONS; INSURANCE; CORPORATION; CORPORATION FINANCE; FOREIGN INVESTMENT; PUBLIC DEBT; FINANCIAL ORGANIZATION; STOCK EXCHANGE; INVESTMENT BANKING; LAND MORTGAGE CREDIT; INVESTMENT TRUSTS; TRUST COMPANIES; SAVINGS BANKS; BUILDING AND LOAN ASSOCIATIONS; BANKING, COMMERCIAL; MONEY MARKET; NATIONAL INCOME; WEALTH, NATIONAL; BUSINESS CYCLES; STABILIZATION, BUSINESS; ECONOMIC POLICY; NATIONAL ECONOMIC PLANNING; GOSPLAN.

**INVESTMENT BANKING.** Banking, or the business of receiving and lending the funds of the community, is described as commercial banking when it consists of receiving demand and short term deposits and making short term loans and as investment banking when it involves mainly originating and distributing long term securities, such as bonds and stocks. The basic functional difference between commercial and investment banking is the time factor: commercial banks facilitate the transfer of short term funds, whereas investment banks deal in long term capital. Investment banking therefore is largely utilized to finance the creation and use of durable capital goods, while the purpose of commercial loans properly so called is usually to finance a single business operation. Investment and commercial banking, however, are not as clearly separated in practise as they may be made to appear in a theoretical analysis: commercial banks in many countries play an important role in supplying long term loans, while investment banking houses not infrequently sup-

ply short term advances to governments and corporations, with or without public offering of the evidences of short term indebtedness.

Investment banking has played a vital role in modern economic life. One of the most typical characteristics of the present industrial order is the large scale enterprise financed through the aggregation of funds of numerous individual investors. The investment banking mechanism furnishes the channel through which funds are combined and directed to users who hold out prospects of an attractive return and protection for the original investment. While those who can utilize long term funds profitably might and at times do appeal for them directly to the investing public, in practise this is frequently a crude and wasteful process as compared with the specialization of this function in the hands of organizations which have won the confidence of the investing public and which stand ready to appraise expertly the credit of those who apply for such funds. By handling many security issues the investment banker can spread his expenses over a large volume of business and so cut down to moderate proportions the cost of investigating and distributing each offering.

The growth of investment banking coincides roughly with the evolution of modern capitalism. More specifically, modern investment banking dates from the nineteenth century and is the result of certain economic and political developments within capitalism. One of them is the rise of the modern state. Governments have been the earliest and most persistent borrowers from investment bankers, and the investment banking mechanism was originally created in most countries to help finance the government. In the nineteenth century the number of strong and stable governments which could be regarded as preferred risks increased; at the same time loans to governments became safer because they ceased to borrow for war purposes primarily and developed instead a tendency to borrow heavily for productive purposes, such as public works. Even more important for the later growth of investment banking was the development of large scale corporate industry. Because the investment banker is typically a merchandiser of securities, his task is greatly lightened if he can offer his clients issues of large and well known corporations. Such corporations by tending to adopt financial policies which make for more continuous financial strength create for their bonds and stocks a favorable status as investment media. Allied with the growth of corporate busi-

ness was the development of the export of capital. As nations became industrialized and turned to foreign markets as outlets for surplus production they had to extend long term credits to less well developed regions in need of equipment. The export of capital assumed major proportions in several countries during the nineteenth century and added the financing of governments and industries abroad to the other activities of investment banking organizations.

The mobilization of capital through investment banking media was facilitated during the nineteenth century by the rise of institutional investors and investing institutions, which furnished a large and certain market for securities at all times except in periods of major deflation. Life insurance companies built up reserves aggregating many billions of dollars invested largely in real estate mortgages and securities; other insurance carriers also accumulated in the course of time large reserves which had to be invested. Commercial banks properly so called devoted part of their assets to the purchase of securities. At the same time eleemosynary institutions and general business corporations became buyers of securities in vast amounts. There was also a great increase in the number of individual investors. The evolution of the money economy early created a special class in the community which received money incomes substantially in excess of expenditures, furnishing a surplus available for investment; the proportion of the population in receipt of such surplus money incomes has steadily increased in economically advanced countries. In the more industrialized nations participation of the mass of the population in the investment banking process was encouraged by the creation and spread of investing institutions, such as savings banks, trust companies and investment trusts, which act as agencies of cooperative investment for numerous individual savers.

In its more primitive form banking was concerned often with investment as well as commercial operations. Banking in antiquity, as judged by the fragmentary evidence available at present, appears to have been largely commercial in character; but allowance must be made for the fact that governments sought long term credits and that certain industries, such as shipping, required even at that time outside long term capital. During the Middle Ages banking was practically unknown as a separate business, but whatever banking was carried on was largely of the investment type. Thus the Bank

of Venice, known as the first public bank, was primarily a transfer office for public debt and was created through a forced loan levied on the wealthy citizens of the republic. The Lombard bankers combined extensive trading operations with the grant of long term loans to lay and clerical rulers. The Bank of England itself was founded in 1694 as a device for raising a long term loan for the government; it obtained the note issue and banking privilege in return for an advance at 8 percent of £1,200,000 to the government of William III.

The tendency of banking institutions to specialize along either commercial or investment lines became manifest first in Great Britain. The reasons for it are largely historic. Since London developed as a center of international trade before it became the financial capital of a great industrial nation, its banks early concerned themselves with the financing of trade. British industry, which was the first to experience the rapid transformation and expansion known as the industrial revolution, has been built up from small units and financed largely out of its own profits or by local investors rather than through large public issues of securities. The earliest and perhaps the most important type of investment banking institution in England were the merchant bankers or acceptance houses. These houses, originally engaged in trade, gradually built up reputations for financial strength which made their credit generally acceptable; their major interest shifted then from trading in goods to the acceptance of bills drawn on them by English and foreign merchants. In the course of time foreign governments also turned to them as an easy means for tapping the London capital market, with the result that they became important also in foreign security financing. For a time some merchant bankers, such as Overend, Gurney and Company, sought short term deposits, allowing a liberal rate of interest in order to attract funds for long term investment abroad; but the collapse of this famous Quaker firm in 1866 precipitated a major panic in London and tended to establish in Great Britain more firmly than ever the desirability of institutional specialization. Merchant bankers have refrained as a rule from financing home industry. The same is true in the main of houses of issue, which are large investment banks specializing primarily in the origination of new issues. The long term financing of domestic industry, where the organized investment market is drawn upon, is done through



finance and investment companies or through promoting groups created for the flotation of specific issues. Some issues are undertaken also by ad hoc groups of investment trusts, finance companies, insurance companies and large individual investors, the purpose of which is to benefit their participants to the extent of underwriting costs and profits. The distribution of securities to the ultimate investor is handled mainly by brokers working for a commission, although in recent years joint stock banks, which otherwise specialize narrowly in the commercial banking business, have undertaken to execute security orders for their clients.

On the continent of Europe the tendency has been for both commercial and investment banking to be carried on by the same institution. This combination of functions is to be explained largely by the comparative lateness of the industrial revolution in these countries and by the absence of a substantial body of individual local investors ready to finance home enterprise. The relatively large units necessary to take advantage of modern industrial methods could be founded in these countries only with the aid of banks which provided long term as well as working capital and often took an active role in initiating, planning and promoting enterprises. This is clearly illustrated in the history of German industrial development after the creation of the empire. The large German banks promoted the establishment of new enterprises, financed the expansion of old ones through short term loans funded after a while into long term obligations and on the whole tended to dominate large scale industry through the retention of substantial blocks of securities and through controlling access to the capital market. Investment banking in all continental countries is carried on more or less on the German model, the only important exception being France, where banks are more specialized. The large credit banks in France confine themselves on the whole to distribution of fixed interest securities through their numerous branch offices, while the *banques d'affaires* act as full fledged investment banks originating new issues, distributing them to large investors and carrying substantial blocks of securities in an attempt to retain control and stabilize the market. Both types of institutions tended until the World War to neglect home industry, with the exception of railroads.

Of less importance than the general banks in the evolution of investment banking on the con-

tinents have been two types of organizations—private banks and finance companies—which have engaged primarily in investment banking and at times carried on a competitive struggle for supremacy. Many of the private banks, resembling the English merchant bankers, were family enterprises which attained to prominence in the eighteenth century, some tracing their history back to the Middle Ages. One of them, the house of Rothschild, assumed during the nineteenth century a dominant position in the more important money centers of Europe. Private bankers constituted the financial aristocracy of their countries and exercised an influence in business and politics entirely out of proportion to the amount of capital under their control. Finance companies were launched by public subscription, especially during periods of prosperity, to enrich their stockholders by the fabulous profits that were supposed to be reaped by investment bankers. One of the earliest and certainly the most spectacular of the continental finance companies was the Société Générale du Crédit Mobilier incorporated in 1852 in France. Its organization was encouraged by Napoleon III as a balance to the power of the Rothschilds, who had been very intimate with his predecessors on the French throne. Its prime purpose was to furnish long term credits for large scale business by selling its obligations and shares to numerous small investors. It engaged in industrial promotion on its own initiative and sought to dominate the market for new issues by bidding vigorously for prospective new offerings, by purchasing outstanding securities in the open market and by making a large volume of security loans. The Crédit Mobilier eventually got into difficulties and was reorganized as a commercial bank of deposit and discount, but its methods were copied by many German and French banks and its influence is believed to have been substantial in shaping the course of development of continental investment banking. The experience of the Crédit Mobilier is typical of the history of later finance companies: organized during security market booms and depending upon public security issues for their funds, they have been burdened with a frozen portfolio in the subsequent period of deflation. General finance companies must be distinguished from companies created by groups of bankers, with or without the participation of industrialists, to facilitate the financing of an important industry which has been brought under unified control or attempts organized expansion into foreign fields.

Finance companies for specific industries are quite common in the smaller continental countries and are found also in England. In Germany the finance company is generally a subsidiary of one of the large banks or of an important industrial combination.

In the United States investment banking was much slower in developing than commercial banking. Incorporated banks which began to grow rapidly at the end of the eighteenth century were at first restricted to commercial activities; and both the first and the second Bank of the United States were by their charters limited to dealing in bills of exchange and bullion. The assumption of the national and state debts by the federal government after the adoption of the constitution created a temporary flurry of interest in securities; the beginnings of brokerage organizations in New York and Philadelphia are traced to this period. Capital to finance a few large enterprises and the Louisiana Purchase was obtained largely from England and Holland, the two most important capital markets at the time; also the internal improvements and the westward expansion which followed the War of 1812 were based on large imports of capital from abroad, chiefly Great Britain. As the capital import movement grew, a special mechanism was gradually evolved to handle it. Some Americans, like George Peabody, a Yankee dry goods merchant, opened houses in London to bring American securities to British investors. The second Bank of the United States, after being rechartered in 1836 as the United States Bank of Pennsylvania, opened a London agency and sought to popularize American securities there. Conversely British houses, like the Barings, built up American connections of their own and even the Rothschilds after long hesitation sent August Belmont as their personal representative to the United States. A few domestic investment banking houses served the home market exclusively. Many of the commercial banks bought bonds at the time or made loans on them freely, and in the period of "wildcat banking" the distinction between commercial and investment banking became very tenuous.

The collapse of the United States Bank of Pennsylvania and defaults on state securities after 1841 cut off for a time the supply of capital from abroad and stimulated the growth of a domestic capital market, which prior to that time consisted of a few wealthy traders and shipowners in New York and Philadelphia. Because of disastrous experiences with wildcat

banks there was a general tendency to draw a sharper distinction than heretofore between commercial and investment banking, both in law and in practise. As a result security houses combining issue and brokerage functions gradually came to the fore, especially in connection with the railroad financing of the period. In the years from 1840 to 1860 such houses as E. W. Clark and Company of Philadelphia, which helped finance the Mexican War, and Drew, Robinson and Company of New York, which included Daniel Drew and aided in the financing of the Erie Railroad, were organized.

During the Civil War the development of investment banking was further stimulated by the exclusive reliance upon domestic financing forced upon the union government by its lack of popularity in Great Britain. Funds were obtained through a syndicate of banking houses under the leadership of Jay Cooke and Company, the first such operation carried out in the United States; and the sale of a billion dollars of government bonds to a vast number of individual investors was successfully accomplished through the use of salesmen and advertising.

After the war the investment banking mechanism developed during the conflict was shifted to the sale of railroad mortgage bond issues, stimulating the overdevelopment in this field which led directly to the panic of 1873. While Jay Cooke and a number of other houses that had turned to railway financing collapsed during the panic, others continued active in the retail distribution of securities; and in the following twenty years the size and strength of the security selling organization enjoyed further growth. Many new firms were started, while several mercantile and trading organizations shifted to investment banking in response to the attraction of larger profits, thus repeating the history of the English merchant bankers. The house of J. and W. Seligman, for example, evolved from a mercantile to an investment banking status during this period, and Lehman Brothers changed from a cotton to a security house. In addition there was a marked tendency for many investment houses throughout the country to shift their major activity to New York as the financial center of the nation.

International bankers, whose relative importance had waned during the Civil War and post-bellum days, came to the fore again in the 1890's when a wave of railway receiverships engulfed about one fourth of the railway mileage of the country and the gold standard was endangered

by the monetary policies of the federal government. Houses like J. P. Morgan and Company with excellent English and French connections, Kuhn, Loeb and Company and August Belmont and Company with strong German and Austrian affiliations, took the lead in the reorganization of bankrupt railroads and the rehabilitation of government finances.

In order to make their work of railroad construction effective the bankers had to take a keen interest in management. Prior to this time American investment bankers, following the English tradition, concerned themselves mainly with the sale of securities; they assumed only a minor role in the enterprises which they financed leaving the active heads of the business free to determine its policies. It was principally due to this fact that American enterprise retained control in a large number of concerns financed largely with capital imported from abroad. But the international banking houses which reorganized the network of bankrupt railroads were too jealous of their reputation and too keenly aware of the dangers involved to leave management in the old hands. Not only did they take prominent places on boards of directors but they also merged properties, bought control of competing railroad lines and formed holding companies or voting trusts which tied up control of individual lines for a number of years.

The period of prosperity which followed the election of McKinley in 1896 made the railway reorganizations and combinations of the preceding years extraordinarily successful. The great banking houses, their prestige raised and their wealth multiplied by the successful railway reorganizations, proceeded to apply the same methods to other industries, thus initiating the era of industrial mergers which followed the turn of the century. Frequently they took the lead in organizing combinations—the United States Steel Corporation, for example, was directly promoted by J. P. Morgan and Company—and in other cases, where industrialists or promoters initiated the combine, the bankers took over control when their financial aid or managerial ability was sought.

While in the time of Jay Cooke the house with the most salesmen and the largest number of clients was in the lead, during the period of reorganization and combination stress was laid upon origination rather than distribution power. In the following decades the actual work of domestic security distribution fell increasingly to

relatively small organizations scattered all over the country; and the big international banking houses, whose prestige stood high with institutional investors and retail dealers at home as well as with security distributors abroad, held a dominating position in the financial markets. At the same time a number of financial institutions other than investment banks were drawn into the security business. During the great speculative boom trust companies, which had for some time exercised general banking powers without specific regulation in New York and other states, became active also in the security markets. The large life insurance companies, in possession of huge reserves and closely affiliated with investment bankers, participated freely in underwriting the numerous issues of securities floated in connection with large merger and expansion programs. Commercial banks, although limited by law in their powers of engaging directly in the investment banking business, purchased bonds freely and greatly increased their security loans during this period.

The panic of 1907 was followed by considerable readjustment. The Hughes investigation in New York state caused the removal of life insurance companies from the security underwriting business, although they continued as the largest single group of security buyers. The failure of the Knickerbocker Trust Company in New York City brought about laws for the regulation of trust companies, but these did not interfere directly with their security purchasing or underwriting activities. While greater specialization of function among financial institutions was thus enforced, commercial bankers made use of security affiliates incorporated under state law in order to enter freely into investment banking operations. To preserve identity of ownership between the bank and the security company the stock of the latter was deposited in trust for the benefit of bank stockholders and it was provided that bank stock could not be sold without the transfer of stock ownership in the security affiliate. The First National Bank of New York organized the First Security Company in 1908, the National City Company followed in 1911 and in the ensuing years commercial banks in a number of cities followed suit.

The World War and post-war periods witnessed a spectacular expansion of the investment banking mechanism in the United States. The unprecedented increase in the number of individual security holders during the war, a result of the intensive Liberty bond campaign, paved

the way for the enormous sale of corporate and foreign securities after the war, a course which was facilitated by the prosperity of the 1920's. The avidity of the public for new investment and later for speculative issues exceeded all bounds, and the rapid expansion of bank investments and security loans to individuals and brokers created purchasing power with which to pay for the new flotations. Because of their strategic position the security affiliates of banks played during this period an increasingly important role in the origination and even more in the retail distribution of securities. So broad did the security market become and so plentiful were the available foreign bond issues, investment trust securities and all kinds of industrial flotations that numerous new or formerly obscure organizations rose to prominence and competed vigorously with the older and well established houses. The latter were compelled in many cases to change their methods to keep pace with these less conservative and often remarkably effective rivals. Even where the older houses became less active, however, the fact that they still played a prominent role in the management of many leading enterprises through interlocking directorates and substantial stockholding enabled them to maintain a position of influence. In addition a number of organizations other than investment banks became once more engaged in the security business. Investment trusts, particularly those affiliated with investment houses, participated in underwriting activities. In the public utility field some holding companies took a prominent part in the financing of their subsidiaries, organizations like the Electric Bond and Share Company and Stone and Webster, Inc., combining management and investment banking functions. The stock market panic of 1929 and its aftermath caused considerable mortality among the newer organizations and enhanced the prestige of a number of the older houses; it also led to agitation for a return to the earlier basis of institutional specialization, particularly through a reduction in the activity of commercial banks in the security markets.

Outside the United States, to which Canada is closely linked with respect to investment operations, and the European countries the development of investment banking has been retarded by the absence of a large class of individual investors. Thus in Japan despite the attempts made by the government to foster investment in home securities by people of small means a compila-

tion made in 1928, a year of comparatively active new financing, showed that 92 percent of the new issues was sold to banking, trust and insurance companies and only 8 percent was taken up by individual investors. Such conditions do not warrant the creation of a specialized investment service; whatever investment financing is done locally must be consummated by general banks.

The investment banking mechanism of each country and period has been strongly influenced by the type of borrower seeking funds in its capital market. In Great Britain, for example, foreign government financing called for a small group of strong houses under whose auspices the rank and file of investors could be successfully appealed to. With the coming of the railway era it became necessary to evolve new channels for raising the capital needed and the great railroad building boom of 1844-47 brought into prominence a group of contracting and financing houses that subsequently played an important role in London investment banking. Again, new types of institutions became important in several European countries immediately after the World War when, through the cooperation of banks with the government, organizations were created to promote the expansion of foreign trade by providing intermediate and long term credits. An interesting outgrowth of industrial rationalization in the subsequent period was the holding, promoting and financial enterprise of Kreuger and Toll, based in the first instance on the successful monopolistic organization of the Swedish match industry. It made large loans to governments in return for match monopoly concessions and obtained funds by selling its own securities in the richer capital markets of the world. The taint of fraud in its management as well as the world wide depression brought on its complete collapse in 1932.

Investment banking practise is even less standardized than investment banking organization. The manner in which security issues are handled varies not only from country to country but also within the same country, depending upon the size of the issue, the investment or speculative character of the security and its other relevant characteristics. Generally, however, the course of each new issue may be said to consist of three successive stages—investigation and negotiation, purchase, and distribution.

New security offerings come to the investment banking house in a variety of ways. The very large corporations maintain continuous financial

and personal relations with a banking house, such relations being often based on interlocking directorates. Buying representatives of the banking house and independent agents and negotiators also play an important role. Smaller houses usually obtain securities for distribution by joining syndicates initiated by the larger organizations. Many issues of a less seasoned character are brought to an investment banking house by direct application on the part of corporations, while in the case of municipal issues and railway equipment trust certificates competitive bids are sought because of the high degree of standardization found in this field. However the new offering may be brought to the attention of the investment bank, its statistical or buying department will make an investigation. Often an option will be taken on the issue for a period of time while thoroughgoing accounting, engineering and financial surveys are made, at times with the aid of outside specialists. If the investigation leads to a favorable result a purchase agreement is drawn up describing the issue and the terms on which it is to be taken over.

Because of the magnitude of possible losses investment bankers prefer to share risks, even those they assume only for a short time. Accordingly it is customary for issues to be purchased, either in the first instance or immediately after acquisition by the originating house, by a banking group. In the case of large issues two or three such groups may be formed in rapid succession, additional houses being brought in at each stage to spread the risk further and to interest additional organizations in the eventual distribution. When an issue is purchased outright by the investment banker it is said to be underwritten; the term, however, is also used in a narrower sense when bankers underwrite the sale of an issue offered directly by the corporation to its existing shareholders. Because of the legal preemptive right of shareholders in most corporations to subscribe to additional common stock issues such offerings of established companies are generally made first to their own shareholders, with the underwriting bankers standing ready to take over the unsold portion.

Since sudden changes in financial conditions may make new security issues unsalable after their purchase by investment bankers, a large measure of risk is incurred by them in comparison with the profits that can be made on any one issue and the capital that must be embarked

in the business. It is customary therefore for the original purchase group to form distribution syndicates to take over and sell the issue to investors in the shortest time possible. Such syndicates bring to bear the joint efforts of their sales forces and established connections with numerous small dealers to push the sale of each issue; thus they are able to reduce the risk incurred by shortening the time needed for selling and also to obtain a more widespread and hence more effective distribution. The original purchase or banking group may at times use selling groups instead of distribution syndicates; these do not underwrite the sale of the issue but merely obtain a "dealer's discount" from the offering price to the public if they accomplish sales to their clients.

The gross income of investment banking houses is obtained primarily from the spread between the purchase and sales prices of new issues. Among the important supplementary sources of revenue are the acquisition of bonus shares and blocks of securities at low prices in connection with new issues or promotions and the exercise of fiscal agency functions for governments and corporations for whom financing is carried out. Expenses arise chiefly from salesmen's commissions, advertising and the overhead cost of running the organization. A prominent item of expense is the cost of large loans from commercial banks, arranged by syndicate groups or by individual houses and protected by security collateral. Investment banking organizations must resort to such loans, because their capital usually constitutes but a small percentage of the total commitments they undertake. The slowing down of the process of security distribution, especially in periods of temporary congestion of new offerings or of severe bond market deflation, calls for a very large increase in these loans, as the amount of unsold securities in the hands of investment banking houses is at such times abnormally high. Although investment banking houses do not as a rule publish statements showing their income accounts or balance sheet position, profits are known to vary widely with changes in security market conditions. Costs in relation to the volume of business handled are smallest for wholesale houses and those specializing in selling to financial institutions, while they run highest in houses engaged in retail distribution to the small individual investor. They are very high in the case of small and highly speculative issues, which, however, are generally avoided by large

and well established banking houses. In these issues high pressure salesmen or aggressive mail order advertising campaigns are used to reach small buyers; the greater and more expensive effort needed to effect distribution is balanced by a very wide spread between purchase and sales price.

The outstanding peculiarity of investment banking practise in the United States as compared with that of European countries is perhaps this ubiquitous use of the security salesman, a practise which developed from the aggressive "doorbell ringing" methods of selling first made prominent by Jay Cooke in Civil War days. Virtually all houses of any size engaged in retail security selling depend upon corps of salesmen, compensated in the main by commissions on actual sales, to keep in touch with clients and obtain orders. In continental European countries, on the other hand, security buyers are expected to come to their banks and investment houses to place orders; while in England brokers play a prominent part in retail security distribution by advising clients and taking orders on a commission basis for new offerings. Other features more or less peculiar to American practise in times of prosperity are the popular sale on a large scale of stock as well as bond issues, the speedy nominal "closing of the book" shortly after the offering, the pegging of prices through syndicate bids in the open market during the period of distribution and the development in recent years of periodical, billboard, radio and direct mail advertising of securities as a means of reducing the resistance met by the salesmen in effecting actual sale.

While the basic economic function of investment banking is to allocate the annual flow of savings to specific productive employment, it tends also by offering acceptable media for investment to encourage saving and hence to accelerate industrial development. The stimulation of investment thus attained is uneven; it is at its peak in periods of prosperity, for as soon as the public evinces a willingness to buy there is a general rush among investment bankers to create and dispose of new issues at a profit before the market becomes saturated. When the expansion in investment banking operations assumes the proportions of a boom in the security markets, the investment banking mechanism is all too likely to absorb an excessive proportion of liquid funds and short term credits in order to support investment in long term securities. At such times large scale purchases of securities

by banks and the sharp increase in security loans to individuals permit the investment banker to sell new issues on a greatly enlarged scale. The resulting rapid bank credit expansion for investment purposes, experience teaches, leads to maladjustment later, in the course of which the indebtedness is scaled down while the volume of new financing is reduced for a time to abnormally low levels. Investment banking also tends to strengthen large business units at the expense of the small: since large enterprises and combinations attract the attention and the confidence of the investing public, their securities are more readily marketable and because of their larger volume they can be handled at a smaller unit cost. The presence in a country of a highly developed investment banking organization hungry for business is thus an important stimulus to the expansion of established enterprises by the issue of more securities and an incentive to the formation of large scale combinations. In Great Britain, where the investment banking institutions have been traditionally engaged only in government and foreign financing, large scale enterprise and industrial rationalization have been relatively long delayed despite the fact that in the early nineteenth century British industry was in the van of progress by a wide margin.

The issue house, the central factor in the investment banking mechanism, exercises a dominant role in determining the distribution of new capital among various industries. In normal times important issue houses turn down far more individual applications for funds than they accept, selecting those which are likely to prove most attractive to the investor and which promise the greatest profit for the house. In order to protect their clients, to assure future control over financing and to profit in other ways investment banking houses have sought to gain control over large corporations by retaining large blocks of voting stock and by obtaining representation on boards of directors. In connection also with government financing the investment banker has frequently sought to be more than a merely passive agency for selling securities at a profit. At times bankers have dictated policies to political bodies as a price for their financial aid. Especially the governments of less well developed countries have had to subject themselves to a measure of control by investment banking houses floating their issues.

In the richer countries the search by invest-

ment bankers for new offerings with relatively high yields tends to turn their attention to foreign securities. Commercial and industrial groups often take the initiative in stimulating an export of capital, seeking to provide buying power for foreign customers by urging bankers to sell bonds for them. In many instances political and trade treaties, concessions, building contracts for public works and similar privileges for special interests have been sought abroad by big banking and industrial groups with loans as the consideration. The need for foreign capital in the economically less developed countries to finance government deficits, railway and other capital improvements and corporate development has made the international banker an important factor in the political development of the last century. In the United States the investment banker has often been guided solely by the desire to distribute at a profit what he considers a satisfactory security. In Great Britain investment bankers have sometimes attempted to foster specifically British exports, going so far in certain cases as to insert in the loan contract a "tying clause" earmarking the proceeds for the purchase of British manufactures. French foreign financing, on the other hand, has frequently been based on political considerations, the foreign office of the government working closely with the international investment bankers for this reason.

Investment bankers may also finance domestic corporations which acquire interests abroad and thus indirectly finance the export of capital. In such cases domestic corporations may float security issues designed to finance the construction of plants and other facilities abroad or the purchase of stock interests in foreign enterprises. In some instances separate corporations are organized to operate abroad. The International Telephone and Telegraph Company and the American and Foreign Power Company are outstanding examples of American corporations that have raised funds freely through security issues in the home market and have invested them in public utility enterprises in foreign countries. Occasionally such corporations develop into full fledged international finance companies. Companies of this type, which have been an important factor in the international migration of capital since the earlier days of the railway era, seek to combine the functions of security flotation with investment and direct participation in industrial management. They raise funds by selling their own securities in the

home market, supplemented at times by foreign issues as well. Capital so raised is then invested in foreign enterprises, control of which is often retained in whole or in part through stock-ownership or monopoly concessions from the government. The finance companies of the nineteenth century being interested in railway promotion often carried on also contracting and construction activities. Finance companies of the twentieth century, like the ill fated Kreuger and Toll, have fostered national industry, in which they participate by stockownership, through utilizing their investment resources to obtain new markets abroad.

Public regulation and control of investment banking are present to some extent in nearly all countries where it constitutes an important economic activity. A number of objectives are sought in public control. The effort to prevent security frauds has resulted in nearly every country in special legislation (known in the United States as blue sky laws) providing either for approval by a regulatory authority of new security issues before offering or for effective prosecution and punishment of fraud after its commission. Also legislation governing the organization, administration and financing of corporations is in part designed to prevent losses to investors through unsound or fraudulent practises in connection with promotions and security issuance. The fact that investors have suffered enormous losses in perfectly sound securities because of sharp declines in quotations during periods of major deflation has created another objective of control—stabilization within reasonable limits of security prices. During boom times this may take the form of restrictive central banking policies. During depressions the reverse policy of artificial easing of credit to encourage expansion of bank investments and loans as support for declining prices is frequently attempted. In certain countries efforts have also been made to attain a measure of stabilization through regulation of stock exchange practises.

A more fundamental objective of investment banking control is the allocation of capital among various prospective users in accordance with some preconceived plan. One instance of such control is that exercised by the Capital Issues Committee set up in Washington during the World War with power to pass on each new offering proposed. Because of the stupendous volume of government financing that had to be accomplished this committee sought to dis-

courage other issues as far as possible, except where they were regarded as necessary to finance industries which played an important role in the prosecution of war, such as the railroads, steel companies, munitions manufactures and the like.

Numerous proposals have been advanced to apply the same principle in peace time in the interests of more rational and stable economic development. During the post-war period several capital importing countries—Italy, Germany, Poland, Australia and Colombia—actually set up control over issues floated abroad. In Italy the minister of finance was given full control over all foreign borrowing in 1928. In Germany borrowing abroad by states and municipalities was made subject to approval by an advisory board of government and central bank officials; this body sought to restrict the import of capital as far as feasible to funds required for productive uses, so that the necessity to pay interest and principal would not constitute a dead weight burden on Germany's international balance of payments. In Italy, Austria and other European countries a large measure of state control over the flow of domestic capital was obtained during the post-war period through close cooperation of the government with large banking institutions. Such a policy has led, however, to the necessity for liberal government aid and intervention in depression periods to prevent the collapse of institutions which become overloaded with frozen commitments undertaken at the suggestion or behest of the state. Complete control over the flow of long term capital is now achieved only in Soviet Russia, where a portion of the national income is allocated each year to stated capital investments under a system of national planning and state control of industry.

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See: INVESTMENT; FOREIGN INVESTMENT; INTERNATIONAL FINANCE; PUBLIC DEBT; CORPORATION FINANCE; PROMOTION, BLUE SKY LAWS; BONDS, DEBENTURES, STOCKS, FINANCIAL ORGANIZATION; BANKING, COMMERCIAL; STOCK EXCHANGE, MONEY MARKET, INVESTMENT TRUSTS; HOLDING COMPANIES; LAND MORTGAGE CREDIT.

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INVESTMENT TRUSTS. Investment trusts are corporations, common law trusts or trustee funds set up to provide investors with the advantages of diversification and supervision of their investments. The sole objective of such trusts is cooperative investment resulting presumably in higher return with equal safety or in greater safety with equal return. Unlike holding, operating and finance companies they generally avoid the "entangling alliances" of management or control of the corporations whose securities they own and so limit their ownership in any one industrial, merchandising or public utility company that they may at any time quietly withdraw without sacrificing related interests or disturbing the market for the securities being liquidated. The preponderance of common stocks in portfolios of most American investment trusts has made more difficult any popular distinction between them and companies organized at least in part for quite different purposes. Terminology is less confused in Great Britain, where investment trusts own principally bonds and preferred stocks and show a wide distribution of risk in their limited common shareholdings.



In the historic Scottish and English sense investment trusts are more closely akin to savings banks or insurance companies than to holding, financing, operating or purely trading concerns. Like the former their appeal has been primarily to the thrifty who have built up estates by systematic saving and reinvestment. Any holder of investment trust securities other than debentures and notes is, however, in a very different position from the savings bank depositor or the insurance policyholder. Instead of being creditor for a stated sum of money under given conditions the investment trust participant is part owner of a fund of securities and cash; his immediate and ultimate returns vary, depending upon the ability and conservatism of the trust administration.

With regard to service investment trust funds and companies may be compared also with investment consultants. Here again, however, the differences are marked. The services of investment counsel may be relatively expensive and are necessarily limited to the wealthier investors. Investment counsel moreover possess varying degrees of authority in giving effect to their recommendations. In some cases their functions are advisory only; in others they are entrusted with complete administration. Participants in investment trusts possess only such control over management as is conferred by voting power of common stocks; while in uniform trust funds the beneficiaries, as long as they choose to hold their certificates of participation, have no control over the trustees. Investment counsel and trust companies in their accounts for private estates must as a rule administer each investment fund separately. Investment trusts rest upon the principle of mingled investments under responsible centralized supervision.

When properly run, investment trusts are the logical vehicles for middle class investors, enabling them to enter the investment arena on something approaching terms of equality with institutional investors and the rich whose capital is sufficient to permit large distribution of risk and employment of special financial counsel. This has proved true during the ups and downs of a half century of British experience, although in the United States certain varieties of investment trust were engulfed in the speculative mania of 1928-29 and departed very far from their proper purposes. Only half the truth would appear, however, if it were not recognized that the wealthy also have found investment trusts convenient and serviceable in building up

a backlog of safe investments which yield a larger return than government bonds.

From the point of view of the individual investor, particularly the inexperienced small investor, the theoretical justification for co-operative investment devices lies in the confusing variety of securities available for purchase, the technical character of modern investment markets and the need for expert guidance in interpreting business trends and critically analyzing corporate reports. From the social and economic standpoint investment trusts may be said to encourage thrift by making investment safer and more profitable and to attract the scattered capital of small investors who otherwise might hesitate to buy securities. By their own purchases and sales—and in Great Britain by the limited underwriting they do in new offerings of bonds which meet their investment requirements—investment trusts have accelerated the sifting processes by which investment markets distinguish between better and poorer grades of securities. Sales from their portfolios when prices are top heavy and purchases adding to their holdings when bargain levels obtain have generally introduced a steadying force into fluctuating markets. On the other hand, in the unusual situation in which investment trusts experience feverish growth and assume a speculative character their heavy purchases of securities on a rapidly rising market may prove an additional unsettling factor by aggravating the inflation of values.

Investment trusts originated in Great Britain around 1860 or even earlier. British investment trusts, however, did not assume real importance until they became actively identified with the rapidly increasing export of capital overseas in the period between 1875 and 1890; the identification of one with the other continued until the World War. Investment trusts assumed a position of leadership in discovering overseas investment opportunities and contributed materially to the consolidation of Britain's financial supremacy by mobilizing the resources of numerous small investors for purposes of capital export—a function which in France was performed by the banks. So important in this connection were the investment trusts that German imperialists urged (with negligible success) that similar companies were necessary for Germany to compete more successfully with England in the export of capital.

In the late 1880's the public interest in British investment trusts reached feverish proportions

and a boom was ushered in accompanied by all the evils of mushroom growth. Investment trusts, which were organized so speedily as to outstrip the growth in the volume of good securities, purchased too freely on rapidly rising security markets and drove the prices of some securities to dizzy heights. The struggle to increase earnings and dividends during times of rapidly rising security prices led many trusts to use devious and unsound practises. In order to realize profits from financing, dealing, issuing and underwriting many companies created large numbers of new trusts, which engaged in a variety of promoting, financial and investment activities and created a pyramid of paper values. In some cases cash dividends were disbursed without allowance for market depreciation and without reference in the reports to the impairment of capital. Some of the trusts failed adequately to distribute risk, confining their investments to a single industry or to a narrow group of securities. A number of the early trusts were characterized by still another weakness, the lack of sufficient reserves built up out of current earnings. There were instances also of too high overhead, of excessive organizers' profits, of transactions which proved more advantageous to certain directors than to the investment trust and of failure to keep a sufficiently liquid position in view of the imminent price reactions. The new institutions also suffered from two kinds of undesirable directors: those whose eminence in other fields attracted investors, regardless of the directors' fitness for their new responsibilities; and those connected with banking houses which frequently used the affiliated investment trusts as a dumping ground for issues which the public failed to absorb.

The Baring crash in 1890 and the accompanying international disturbances revealed the glaring weaknesses and abuses of the investment trusts which had sprung up so rapidly in the preceding decade. During the five years following 1890 some investment trusts were reorganized or wound up; others were compelled to reduce or eliminate dividend rates and to write down capital. Large losses were incurred and public confidence was not restored until the end of the decade. Out of these experiences, however, there emerged tested principles upon which a sounder superstructure was erected. The example of several companies which had successfully overcome adverse conditions and made progress during this entire period was studied to advantage. It was recognized that to finance new and untried

enterprises, to originate securities and to serve as fiscal or management agency for industrial or public utility undertakings are functions separate from those of investment and should not be undertaken by investment trusts. Reports were submitted to investors revealing in a clearer and more detailed manner the financial and investment status of the trusts, and auditors became more exacting in their requirements. Unethical practises in this field are now strikingly absent. The satisfactory performance of investment trusts during the World War and the deflation following it served to increase the faith of the British public. It also emphasized the importance of such factors as purchase for investment values, wide distribution of risk, continuous supervision and freedom from domination by banking houses that would not scruple to place their own interests above those of investment companies with which they are associated.

Practically all British investment trusts, which are usually incorporated under the general Companies Acts, have outstanding debentures as well as preferred and common shares. Borrowing rarely exceeds in amount the aggregate of paid-in share capital; and debentures, perpetual and terminable, through issuance of which almost all borrowed capital is obtained, are protected by cash and security assets equivalent at cost to at least 200 percent of their outstanding face value. Share capital is raised as a rule in the proportion of £60 par value of preferred stocks for every £40 in par value of common, or "ordinary." Thus of every £2000 paid in there will frequently be found £700 to £1000 in debenture borrowings, £800 to £600 in preferred stocks and £500 to £400 in common.

The comparatively low fixed rates on the borrowed and preferred share capital, generally from 4 to 5½ percent, together with expenses of management averaging annually about ½ percent on invested funds can be comfortably met out of income from interest and dividends on the trust's holdings; net earnings resulting from employment of fixed cost capital thus increase the amounts available for distribution on the common shares and for building up of reserves. Advantageous as such a capital structure proves to owners of common shares in times of prosperity and stable security markets, it would be perilously top heavy in unfavorable financial weather except for the British practise of buying mainly senior securities, treating realized profits as capital rather than income, paying out in dividends less than the net earnings derived

from interest and dividend income alone and regularly building up reserves in the form both of surplus appearing under the capital and liabilities side of the balance sheet and of deductions made from the cost figures for investments on the assets side.

In fact there has developed in Great Britain a clear cut distinction between investment trusts and finance companies based mainly upon the arbitrary standard of the treatment of capital profits. Investment trusts are regarded as quasi-permanent investors in securities considered more or less as fixed capital. Sales and reinvestments are made as a rule in order to maintain or improve the quality of the portfolio or to increase the interest and dividend yield thereon and only incidentally to realize profits. Profits and losses on turnover are treated as capital items not subject to the income tax; they are run through a special hidden account separate from ordinary profit and loss, or income, statements and are used in very large measure for reducing the figure at which investments stand in the balance sheet to points often far below cost. Finance or trading companies, on the other hand, treat securities owned as stock in trade and actively buy and sell with the intention of making trading profits; such profits are regarded as income available for expenses and dividends and must be reported, with deduction of realized losses, as taxable income.

There are at present in Great Britain more than two hundred investment trusts with an aggregate paid-in capital well in excess of £319,000,000 derived from issuance of debentures, preferred and common stocks in approximate ratios of 40, 35, and 25 percent respectively. The holdings of each company vary from a hundred to a thousand different investments. As appears from the reports of eighty-three companies holdings are distributed between senior and junior securities as follows: bonds and debentures 41.7 percent; preferred stocks 23.6 percent; common stocks 34.7 percent. For seventy-one companies, whose reports permit such comparative surveys, the geographical distribution of holdings is as follows: British Empire (excluding Canada) 45 percent; continental Europe 18 percent; Latin America 16 percent; United States and Canada 14 percent; other countries 7 percent.

Few institutions closely resembling the British investment trusts are to be found elsewhere. Switzerland and Belgium especially offer notable examples of investment, holding and operating companies interested in rails, utilities and

industrials of many countries; because of the diversity of their holdings and the broad distribution of risk in their portfolios it might not be inappropriate to term some of these companies financing investment trusts. Yet important as have been the credits and investments extending across national boundaries and overseas of numerous banks and corporations in these countries and in France, Germany and the Netherlands, the organizations existing solely in order to diversify risk cooperatively and to provide investment supervision are conspicuously few in number.

In the United States and in Canada there has developed during the last eight years a formidable investment trust movement. The first attempts, during the World War and the early post-war period, to organize investment trusts in the United States were connected with the export of capital. Such attempts, however, were few and were for the time ended by the depression of 1921-22. Interest in investment trusts revived in 1924, but they did not become important until two years later. From then on growth was extremely rapid; within four years investment trusts were organized with resources exceeding \$3,000,000,000. Motives prompting the sponsors varied all the way from a desire to provide the public with sound cooperative investment facilities to a wild scramble for private profits, evidenced in high pressure salesmanship with its attendant abuses. Particularly as the speculative mania of 1928-29 reached fantastic heights, it became evident that an investment device thoroughly sound in principle was in many instances being distorted and misapplied by persons who lacked background, knowledge and in some cases even personal integrity—abuses which recall the vicissitudes of early British investment trusts as well as American experience in the field of mortgages, mortgage bonds and in earlier decades railways, public utilities and banks.

The development of American investment trusts, finance, trading and holding companies not only repeated the earlier British abuses but gave rise to entirely new ones based upon unsound holding company practices. Control of huge aggregations of capital for the purposes of manipulation and speculation was easily obtained in some instances by the issue of non-voting stock; the grant of large common stock bonuses, subscription rights and special voting privileges to promoters; and the use of the holding company controlling a series of subsidiary companies by credit pyramiding devices. Much concentration

of utility, railroad, banking or industrial interests was readily accomplished through capitalizing an almost blind public faith in anything bearing an investment trust label. Promoters' fees and management charges were very often excessive. A few trusts were disguised trading companies speculating in a riotously inflated stock market. Even at the height of the bull market in 1929 there were organized investment trusts which filled their portfolios with stocks bought at prices beyond any reasonable earning capacity. Bankers in some instances unloaded new issues upon investment trusts under their control or influence. Plain as was the earlier British evidence of dangers involved in close relationships between houses originating and distributing securities and investment trusts, it required the events of 1930-31 to give conclusive American demonstration that managers of such companies and funds must have no ulterior motives in their investment policies if they are faithfully to serve investors.

Despite their initial disappointments American investment trusts appear, when viewed in proper perspective, to be firmly established. Comparatively few outright failures occurred as a result of the stock market collapse, and many weak trusts were salvaged, at least in part, by mergers with stronger groups. In spite of heavy shrinkage in their assets investment trusts have largely maintained service on their outstanding debentures. From interest and dividend income many of them earn enough to pay preferred dividends, although in numerous instances these have been continued only after writing down of capital or have been discontinued because of shrinkage in asset values behind their outstanding debentures. Official investigations, including careful surveys by the New York State Bureau of Securities, have shown relatively few instances of deliberate fraud or dishonesty in management, although the New York state attorney general reported to the legislature in March, 1932, that only about half of the one hundred companies intensively studied were free of one or more objectionable practices in "dumping," borrowing and lending, inadequate reporting, speculative operations and dividend payments. The charge that price gyrations rather than stability of security values resulted from their activities is heard less frequently. It is more generally realized that mistakes of judgment in timing their purchases and sales, although largely negating any stabilizing market influences which the relatively modest capital of investment

trusts might even then have exerted, could not reasonably be blamed for the speculative orgy and its inevitable aftermath.

Very few of the American investment trusts have specialized in foreign securities, and those which had been large buyers of bonds or stocks originating abroad have greatly reduced their commitments, both absolutely and proportionately, since 1930. Nevertheless these companies were a factor of some importance in the pre-crisis export of American capital to South America, Japan and Central Europe, particularly Germany. Although no more than twelve or fifteen at the most have held really substantial amounts of German securities, their aggregate funds invested in that country have probably ranged between \$75,000,000 and \$100,000,000 and have represented perhaps as much as 10 percent of their total holdings at cost. The natural bent of the American investor to place his funds in domestic securities has been fortified by the international collapse of business and credit on a hitherto unprecedented scale. As revival of confidence at home, however, must in some measure depend upon and accompany the same phenomenon in other countries, it does not appear likely that the future policy of American investment trusts will place a strong emphasis upon purely domestic holdings. On the contrary, it seems probable that some companies now functioning, as well as others which may be created as vehicles of international investment, will promote the export of capital and thus help to delay the conversion of the United States' favorable visible balance into the unfavorable balance which is normally characteristic of creditor nations.

There are several widely different varieties of investment trusts in the United States. The major types are the contractual (or trust) and the statutory (or incorporated) trust. The contractual investment trust is set up under a special contract, indenture or trust agreement, in accordance with the terms of which a trust company, a party to the trust contract, retains legal and physical possession of the securities or cash or both comprising the corpus of the trust and issues or authenticates certificates of participation. The most widely known investment trusts of this kind are the so-called fixed and semifixed trusts. They may be described as unit series in their make up, because the trust indenture describes a given unit of stocks against which certificates representing two thousand, more or less, pro rata shares are issued for public sale.

When the trust agreement prevents change in the composition of the unit (except in cases of mergers, reorganizations or liquidations) or merely allows eliminations without substitution of any other securities, the trust is fixed; when some leeway is given to make substitutions, whether under purely arbitrary or less exacting restrictions, the trust is semifixed or supervised, as the case may be.

The statutory (or incorporated) type comprises investment trusts organized under the general statutes of incorporation of the several American states or inviting public participation on substantially the same basis and by means of substantially the same kind of securities. Unlike the contractual (or trust) type these investment trust corporations (or Massachusetts or other common law trusts, which are operated like corporations) issue shares or stocks which are not redeemable or convertible like trust certificates; they are shares in an investment enterprise rather than merely certificates carrying a pro rata claim to trustee held units of securities or funds of securities and cash.

Besides the fixed, semifixed and supervised investment trusts of the contractual type, on the one hand, and managed investment trust corporations and Massachusetts trusts, on the other, uniform funds administered by trust companies or affiliates may be regarded as a form of investment trust. Such uniform funds include trust funds and incorporated funds. Uniform trust funds are the means by which several large trust companies enable their clients to share in jointly operated trust funds in minimum amounts too small to warrant an individual trust estate. Participation involves hardly any more formalities than signing a standardized trust instrument or becoming a party to the indenture under which the uniform trust is established by the act of subscription. Details differ, but the purpose is to give small estates the supervision and division of risk enjoyed by large ones. In uniform trust funds the participant, or certificate holder, is both beneficiary and remainderman; the trusts are revocable or the certificates redeemable at the option of the participants at their current values as determined in periodical revaluations. For technical reasons involving problems of taxation, accountancy and investment and distribution policies funds of this kind are not altogether suitable for that great majority of living or voluntary and testamentary trusts reflecting the peculiar requirements of each testator and separating the interests of life

beneficiaries and remaindermen. Application of the economies and advantages of mingled investment for the ordinary types of trust estate may be made more conveniently through an incorporated fund, especially if the trust officers plan an active supervision which will result in shifting investments, and aim both to build up reserves and to pay out distributions from income comprising profits as well as interest and dividends. The corporate form of uniform fund has been worked out by several leading trust companies and is being adopted or seriously considered by others; it is applicable, of course, only where permission to mingle is specifically given in the terms under which the individual trusts are established. No direct public participation is involved; these special investment corporations are merely convenient devices employed by the trust officers for trust estate investment. Complete service can thus be given to smaller voluntary or testamentary trust estates with less inconvenience to the trust officers and with the same attention as that enjoyed by the largest estates and a distribution of risk which is at least equal to, if not much greater than, theirs.

Insistent publicity has created the impression that fixed investment trusts include the bulk of American investment trust capital. That the enormous amounts paid in to companies of the managed variety in earlier years, however, leaves them still far in the lead is evident from compilations made in 1931, which show a total in round numbers of \$3,500,000,000 paid in to American investment trusts, of which approximately \$600,000,000 is for certificates in fixed and semifixed trusts. The \$2,900,000,000 of company capital may be split roughly into \$400,000,000 in debentures or bonds and \$2,500,000,000 in share capital. Although an indeterminate part of this gross figure may represent financing for holding or finance companies or for enterprises on the border line between these and investment trusts proper, it is still sufficiently impressive to illustrate the important if quiet role which such companies are playing today in American finance.

That this has been a passive rather than an active role since 1930 has been due primarily to two factors: the extreme difficulty of raising new capital, which has limited funds available for additional purchases; and the great depreciation as to both bond and stockholdings, which has raised the problem of absorbing realized losses resulting from sales either in the course

of reinvestment or in the process of repurchasing at a discount their own debentures and preferred stocks for retirement. The first difficulty will yield only with time; the second has been met to a degree by the establishment of special investment reserves to bear the impact of necessary losses in the readjustment of long range investment positions. These reserves have been created out of earnings, out of capital surplus arising from the writing down of stated values on paid-in capital stock and out of surplus resulting from purchase and retirement of the trust's own debentures and preferred stocks at prices less than par and liquidation values.

The New York Stock Exchange requirements concerning listing of investment trust company securities, while not insisting upon the separation from income of any realized profits or losses, have at least made it necessary, where such separation does not occur, to disclose clearly in the income statement the amount and origin of any drafts upon these reserves to cover losses over any fiscal period. The practise of excluding from income any cash losses or profits and running these through special reserve or surplus accounts is increasing. Not only are regular dividends to be largely divorced from fortuitous profit and loss on portfolio turnover, according to the Stock Exchange recommendations, but there are to be more frequent and complete accounting, proper exposition of consolidated positions and intercompany relationships, more conservative marketing methods, publicity of holdings and other practises emphasizing professional responsibility among directors and officers. These are all in accord with universal British practises, which also include making interest and dividends alone available for expenses and ordinary dividends, paying only cash on common and regularly reinvesting part of the earnings thereon, eschewing purely trading operation and recognizing the role of bonds and preferred stocks in any balanced investment position.

Of the fixed and semifixed investment trusts it may be remarked that many have improved their set up, presentation and sales methods as a result of the Stock Exchange rulings applying expressly to them. These offerings are not eligible, as are investment company stocks, for listing on the exchange. Association of member firms with them is limited, however, to an approved list of those which conform to requirements setting up new standards in the business. Appeal to

prospective investors on hypothetical charts of "what might have been" (in the highly improbable case that ten or twenty years earlier the identical list of common stocks comprising the present unit would have been chosen) has had to be abandoned. "Loading" and trustee charges have been more clearly expressed in order to permit comparison between offerings. Distinctions have been more clearly set forth between real income and return of capital in distributions made by those trusts which are required by their indentures to sell rights, stock dividends and split ups. There has been positive statement concerning disposition of interest paid by trustees on accumulations and on reserve funds paid in by the public.

One notable result of these requirements as well as of the changed position of many earlier "blue chip" stocks has been the issuance of new series by sponsoring groups for numerous fixed trusts. Not only has the principle of supervision been granted recognition by the dropping of old market favorites and the inclusion in the new units of stocks hitherto less popular, but the indentures have been drawn with greater care or amended with a view to a better definition of the trustee's responsibilities and a provision for his compensation during the life of the trust. Even more significant is the shifting of sales effort from the so-called distributive to the accumulative types. The former, it may be assumed, worked well enough when stock prices were high and markets were soaring. Now, however, the interests of the investor are presumably better served by conserving the results of stock split ups (if any), by saving stock dividends and by exercising rather than selling such rights as may accrue.

The efforts of investment trusts to put their own houses in order, spurred on by official investigations and encouraged by the constructive recommendations of the New York Stock Exchange, have done much to forestall drastic proposals made in various quarters for state regulation. While projects of varying tenor are still under consideration, the laying down of wise comprehensive codes could be exceedingly difficult without a broader background of American experience. Blue sky legislation in the majority of American states gives the commissioners certain powers in requiring reports and in ferreting out abuses, and it is likely that antifraud acts will be strengthened with specific reference to certain generally condemned practises. In so far as investment trusts and particularly holding

companies tend to increase the separation between ultimate ownership and control, it seems likely that federal and state regulation will be broadened and strengthened to take cognizance of their activities in the fields of banking, railroads and public utilities.

LELAND REX ROBINSON

See: INVESTMENT; FINANCIAL ORGANIZATION; HOLDING COMPANIES; TRUST COMPANIES; INVESTMENT BANKING; FOREIGN INVESTMENT; TRUST AND TRUSTEES.

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IONESCU, TAKE (Jonescu) (1858-1922), Rumanian statesman. Ionescu studied law in Paris and as a member of Ilfov's Bar Association entered the political arena with buoyant enthusiasm for the realization of the national aspirations of Rumania and for a program of social reform inspired by his admiration for France and Great Britain. He was the founder of the Democratic-Conservative party and served successively as minister of public instruction, minister of finance and minister of the interior. He was minister without portfolio from 1916 to 1918, minister of foreign affairs in 1920 and prime minister during the short crisis which extended from December, 1921, to January, 1922.

Ionescu furthered the social betterment of the peasant class by making primary education compulsory and by proposing in 1915 the agrarian reform, which was realized in the years from 1917 to 1921. His sympathy for the bourgeoisie moved him to advocate reformation of the inheritance tax (law of 1900), reduction of the legal interest from 5 percent to 4 percent (law of 1904), increase in the number of secondary schools and expansion of higher culture. He protected with equal vigor the political and civil rights of the Jews, defended freedom of the press and was influential in establishing universal manhood suffrage in 1917.

His political career culminated in the part he played in the national unity of greater Rumania. He aided the Transylvanian national movement despite the treaty of alliance of 1883 with the Austro-Hungarian Empire, secretly renewed after thirty years. At the negotiations for the Treaty of Bucharest in 1913 he secured the territorial expansion of Rumania into the Dobruja and from 1914 to 1916 he directed the campaign against the Central Powers. His famous parliamentary speech of December 16 and 17, 1915, brought Rumania into the World War on the side of the Allies. At the peace conference he was instrumental in securing the annexation of Bessarabia, Bukovina and Transylvania. Ionescu favored the creation of a Danube federation of the Balkan states but subsequently realized the impossibility of achieving this and

was instrumental in the formation of the Little Entente in 1920.

CHRISTINE GALITZI

*Consult:* Ionescu, Take, *Souvenirs* (Paris 1919); Iancovici, D., *Take Ionesco* (Paris 1919); Thevenin, Leon, "Take Ionesco" in *Revue politique et littéraire*, vol. lx (1922) 584-86; Maiorescu, T., "Din însemnările zilnice" in *Comorburile literare*, vol. lxvi (1931).

**IRISH QUESTION.** The *pax romana* was never troubled by the Irish question. Not that the Romans were unacquainted with the Hibernians; on the contrary, the evidence points to ever growing trade relations between Erin and Roman Gaul. Christianity was transmitted to Ireland by traders in the fourth century, paving the way for the work of St. Patrick and his disciples in the fifth. Simultaneously, although independently, Roman letters and Roman learning were conveyed to Ireland, perhaps by pagan scholars fleeing before the irruption of German barbarians into Gaul. The eventual fusion of saints and scholars engendered a monastic movement which played a basic role in the re-Christianization and reeducation of Merovingian Gaul and its Germanic annexes, offering formidable competition to the Benedictines and their Roman sponsor. Irish Christianity was not in close communion with the Apostolic See of Rome; Irish saints who were also scholars made their peculiar contributions to mediæval Catholicism independently—notably the *Penitentials*, of which Gregory the Great was unaware. It was this isolation of Irish Christianity which in the seventh century first posed the Irish question in England. The *Book of Armagh* admitted of appeal to Rome from the successor of St. Patrick "if he cannot decide," but this measure of recognition of Roman headship did not suffice for the zealous emissaries working from Canterbury and faced with the rivalry of the Irish at Lindisfarne. At the synod of Whitby in 664 the intervention of an English king decided the issue against the Irish. It was the first but by no means the last time that England and the papacy were to see eye to eye in Irish matters.

In the ninth century the Celts of Erin had to deal with their first invaders. The Northmen, or Ostmen, established themselves in the chief ports from Dublin round by Waterford to Limerick; their walled towns, which frequently had Celtic antecedents, were soon incorporated as integral elements in the Irish political structure—a structure which had meanwhile been evolving, like that of Anglo-Saxon England, toward monarchy of a feudal type. The usurpation of

Brian Boru (1002), although it dispossessed the time honored dynasty of the Ui Neill and opened the way to other aspirants, perhaps gave greater reality to the office of high king. The economic conditions of the time did not permit of real centralization, but in the eyes of contemporary European princes the *magnificus rex Hiberniæ* was the acknowledged ruler of all Ireland. The state of Ireland in the eleventh and twelfth centuries has been not altogether unjustly compared with that of the east Frankish kingdom after the disappearance of the Carolingian dynasty, where an elected king, himself a "stem duke," exercised a variable measure of authority over his fellow dukes, themselves eligible to election to the kingship. In the twelfth century, however, Irish saints and scholars set in train a movement that was to wreck the high kingship. The Cluniac and Hildebrandic reform movements, launched in Ireland by Bishop Gillebert of Limerick, actively propagated by St. Malachy of Armagh (d. 1148) and supported by the high kings, reached their climax at the synod of Kells in 1152, where a Roman legate bestowed the pallium on each of the four archbishops. Ireland of her own motion had accepted the whole program of ecclesiastical reform, but the fact weighed little with popes who had not the reasons for championing political independence that had prevailed in the cases of Poland and Hungary. Accepting at face value the clamorous accusations of Malachy and other Irish reformers, successive pontiffs abetted the Norman-Welsh conquest of Ireland, and thereby facilitated the surrender of its bishops and kings.

The conquest itself was distinctly unnational. Invited and guided by Irish Celts, led and commanded by Norman-French lords whose blood was mixed with that of the Celts of Wales, officered and manned mainly by Welsh and Flemings, Strongbow's force was anything but English. Henry, "son of the empress," followed less to reinforce the conquest than to curb his own vassals. Under Prince John Ireland bade fair to become a Norman sister to England; under John as king the foundation of an Anglo-Norman lordship in Ireland with institutions distinct from their English counterparts was continued; under the justiciar Wogan (1295-1312) the work reached its climax in the formation of a local Irish Parliament. In 1394 Richard II writing from Ireland summarized the situation: "There are in the land of Ireland three kinds of people; the wild Irish, our enemies; Irish rebels; and obedient English." The *irrois*



*savages* were the Celtic chieftains—O'Briens, O'Conors, O'Neils, O'Donnells and the rest—who although ever ready to make submission in return for confirmation of their land and authority were consistently striving to restore and expand the possessions of their sept; the *irrois rebelx* were the "chieftains of English lineage"—Geraldines, Butlers, Burkes and lesser lights—who although ever ready to seize additional lands from "Irish enemies" were still more ready to resent the intrusion of fresh lords from England or attempts to govern Ireland from England. Of very different stuff were the *Englois obeissantz*, consisting mainly of the population of the Anglo-Irish towns; this population was a variegated composite of Irish, Ostmen, Flemish, Welsh, English and other elements bound firmly together by a common business interest. The feudal lords whether Gaelicized Normans or crossbred Celts could have no loyalty to England's king; the towns in Ireland as everywhere in mediaeval Europe were the foes of feudalism and the friends of centralizing monarchy. Anti-Irish only in so far as Irish spelled feudal, the townsmen passed the statutes of Kilkenny and similar defensive legislation. Far below these categories, almost beyond the ken of Richard II or of the chiefs who dickered with him, the mass of the Irish, the tillers of the soil, the drovers and laborers, remained little affected. Transferred from Irish bondage to Norman villenage, their numbers augmented by the depression of many free churls, the *betaghs*, or *hibernici*, possessed no rights, Irish or English, until—as was also the case with their congeners in England—the operation of economic changes wrought their slow conversion into a free rent paying tenantry dependent mainly on wages for their livelihood.

In the fifteenth century the English interest in Ireland reached its lowest ebb, and the rise of the new monarchy in England entailed a new, this time an English, conquest of Ireland. The Tudors in England using Star Chamber and Parliament to crush the survivals of feudalism were fain to use other tactics in Ireland. A Parliament of the "obedient English" of the four counties of the Pale—less than a twelfth of all Ireland—called in 1494 by the deputy Poynings, ratified for Ireland recent acts of the English Parliament and provided that in future all legislation of the Irish Parliament must have the prior approval of the English council. The Parliament of Ireland having thus surrendered its independence not to the English Parliament but to the English crown, the latter in its turn handed

back its powers, old and new, to the Geraldine Kildare. Unable as yet to cope with feudalism in Ireland, Henry VII left the Irish to "crown apes next" while he consolidated his position in England. Although the Butler-Geraldine feud and the headlong revolt of Silken Thomas in 1534 compelled the extension of the Pale to include most of Leinster, Henry VIII preferred to govern Ireland "by sober waies, politique drifts, and amiable perswasions." Nor did his emphasis on repudiation of papal supremacy in assuming the title of king of Ireland in 1541 meet with especial resistance from Ireland.

As Elizabeth became increasingly involved in continental politics, the attempt to rule Ireland through Irish chiefs broke down. Shan O'Neil denied the queen's right to make him a hereditary earl and, posing as a champion of Catholicism, intrigued with Guise and Spain, a policy imitated by other and lesser chieftains. Thus sprouted the religious branch of Gladstone's upas tree—a branch that was to flower in the penal laws and bear fruit in the "uncrowned king." While Englishmen despite the efforts of the Jesuits gradually abandoned Roman Catholicism, Irishmen clung to it as the badge of their special interests. The queen's answer was the policy of plantation and the reduction of Munster and Connaught. With the flight of the earls in 1607 the way was open for the plantation even of Ulster. The growth in James' reign of the agrarian branch of the upas tree did not stop there; gavelkind and tanistry were judicially pronounced invalid; Davies undertook a general examination of old Irish tenures and redistribution in fee among the former holders. The small freeholders, deliberately dispossessed, emigrated, were reduced to tenants or took to the wilds as "tories," forerunners of the Whiteboys. In certain areas the Elizabethan policy of "surrender and regrant" was superseded by widespread confiscation and systematic plantation. Yet the bulk of the land did not change hands, and the survival of brehon customs—later known paradoxically as the Ulster custom—left the tenants essential security; the position of the toiling masses, the cottiers, remained unaffected by the fortunes of their betters whether Irish or English. Commercial prosperity was deliberately fostered, especially by Strafford, in the interest of the revenues of the English crown, then so anxious to avoid financial dependence on the English Parliament; an Irish army supported by Irish money promised to be a strong prop to English absolutism. Irish Catholics suffered

fewer disabilities than English and only in political life.

Stuart prosperity bred Stuart loyalty. The insurrection of 1641, mainly of quondam landlords against plantation landlords, gave place to a far wider movement for the crown against the Parliament, although Owen Roe O'Neill still asserted an independent Catholic patriotism, which hampered Ormond's efforts. Cromwell in Ireland knew no distinction between royalist and Catholic. Unprecedentedly sweeping confiscation totally altered the agrarian problem: "Hell or Connaught," coupled with continental armies and American colonies, claimed the vast bulk of Irish landlords and tenants; the laboring cottiers remained to till the soil for Puritan warriors and London realtors. Trade and industry were annihilated by war and discrimination. Restoration brought fresh "settlement" of the land, which was restored only in small part to pre-Cromwellian holders; absenteeism mounted and insecurity depressed values. However alien themselves, the landlords welcomed the reappearance of an Irish tenantry; customary tenant right survived all storms, and Catholic disabilities did not extend to rights in land. The loss of population, hurtful to the landlords, seems to have benefited the cottiers. Trade and industry revived, again encouraged by the crown, although the English Parliament was now able to keep a watchful eye out for English commercial interests. Once again the Stuarts strove for the welfare of the "obedient English" of Ireland, and once again even conditional prosperity bred not nationalism but loyalty to the crown and hostility to the Parliament of England.

The triumph of William of Orange at the Boyne in 1690 ushered in a new era for Ireland, the rule of the English Parliament. The conquest was complete and was fully exploited by the conqueror. The English Parliament at once assumed—and in 1719 asserted—the right to legislate for Ireland. By English law Catholics were excluded from the Irish Parliament, and the latter was permitted to enact the penal laws. To reinforce the Protestant landlord garrison further confiscation of Catholics' land was accompanied by abolition of customary tenant rights. The Catholics, forbidden to purchase land or to lease it for long periods, were reduced for the most part to tenants at the mercy of Protestant landlords. These landlords, whose title rested on seventeenth century confiscations and whose ascendancy rested on the penal laws, were bound to loyal dependence on England.

The middle class, Protestant and Catholic alike, was simultaneously eliminated. William had promised: "I shall do all that in me lies to discourage the woollen manufacture in Ireland, and to encourage the linen manufacture there, and to promote the trade of England." The legislative destruction of the Irish woollen industry by the English Parliament in 1698 was but the chief of a series of measures which while tolerating distilling, the linen industry and the provision trade drove thousands of manufacturers of both creeds to France and other countries. In such Ireland, ruled by a class of landlords largely absentee and almost exclusively Protestant, with a negligible middle class—save for the agents and middlemen of the landlords—and a hopelessly rackrented peasantry, there was no room for nationalism; neither 1715 nor 1745 produced a ripple in Ireland; like Swift and Molyneux before him, Lucas went unheeded.

The accession of George III heralded the birth of a new, non-Celtic although largely Catholic Irish patriotism. Disturbances in the American colonies impaired the market for Irish linens; worse, the revolution led to an embargo on Irish provisions, bringing distress and suffering to landlord and tenant. The Irish Parliament was moved in 1779 to demand free trade with England. Backed by non-importation agreements, the drilling of the volunteers and the inability to find Irish money to pay British troops, the demand was impressive; at war with France, England repealed her restrictions on Irish trade and industry; under further pressure the act of 1719 was repealed in 1782; and in 1783 the English Parliament completely renounced its legislative authority over Ireland. During the agitation of the "rival Harries"—Grattan and Flood—most of the penal laws had been repealed; the remainder soon followed, and in 1793 Grattan's Parliament admitted Catholics to the franchise although not to the legislature. A period of prosperity marked by resuscitation of Irish industry ensued.

Simultaneously had been born a very different movement. The Whiteboy disturbances, beginning in Munster in 1761 and spreading under a variety of names to other provinces, have been well described as the operation of "a vast trades' union for the protection of the Irish peasantry: the object being, not to regulate the rate of wages, or the hours of work, but to keep the actual occupant in possession of his land, and in general to regulate the relation of landlord and tenant for the benefit of the latter." At the same

time efforts were made to reduce or abolish the tithes to the Protestant clergy and to limit the fees of the Catholic priests. Economic distress enhanced by the rapid growth of the poverty stricken population took no heed of religion or politics save in the north; there the division of the lower classes into Catholics and Protestants made it possible to stimulate the latter against the former. The rise of the Peep o' Day Boys, later Orangemen, rallied the Catholics to the ranks of the Defenders, later Ribbonmen, and precipitated a long series of disturbances of religious color.

The French Revolution was echoed throughout the British Isles in the formation of republican secret societies; the chief Irish society, the United Irishmen, arose among the Presbyterians of Belfast. The appeal of liberty and equality was primarily to the middle class; the aristocracy and gentry boasted few such romantics as Lord Edward Fitzgerald. For these Jacobin enthusiasts the victory of 1782 was of small moment. Grattan's Parliament had two grave defects: it did not control the Irish executive—the "kingfishers"—and it remained a landlord assembly thronged with English placemen. Conscious of weakness in the face of a ruling class backed by a foreign government, Theobald Wolfe Tone, a Dublin Protestant accepted as leader of the movement, appealed to the peasants against the landlords: "Our independence must be had at all hazards. If the men of property will not support us, they must fall: we will free ourselves by the aid of that large and respectable class of the community,—the Men of no property." The peasantry, flattered by the unusual attention of their betters and as in France ready to embrace the opportunity to remedy their grievances on an exceptionally generous scale, rallied to the cause; the Defenders were partly absorbed into the United Irishmen, and Whiteboyism ventured into new fields. From its new allies the movement suffered more than it gained; the Presbyterians tended to draw back in alarm; agrarian disturbances enabled Fitzgibbon to intensify repression. French expeditions ended in disaster, and Tone escaped the gallows by Roman suicide in prison; his associates paid on the scaffold for the insurrection into which they were driven in 1798. The union was bought, if not fully paid for, and Robert Emmet's brief flare was speedily extinguished.

In the first half century after the union the Irish upas tree speedily put forth a verdant foliage, its three branches—agrarian, religious

and educational—sturdily supported by the ancient political trunk. The roots lay deep in Ireland's past, but the mature verdure of the nineteenth century was of a hue not conspicuous in earlier Irish landscapes. Throughout Irish history the agrarian question had risen from the struggles among landlords past, present and prospective. The completeness of the Williamite conquest and the subsequent proved stability of the British government had removed all fears of fresh confiscations. By the end of the eighteenth century existing Irish land titles might be regarded as secure. But the very security of the landowner, coupled with the effects of capitalistic economy, increasingly forced to the fore a new agrarian problem—the problem of relations between landlord, tenant and laborer.

At the time of the union there existed a marked tendency in the direction of small holdings, due principally to the operation of Foster's corn law of 1784 but stimulated by the admission of Catholics to the franchise in 1793; the one factor put a premium on tillage, the other on the number of forty-shilling freeholders on a landlord's estate. The "peace without a parallel" and the consequent fall of grain prices, coupled with the landlords' unwillingness to adjust rents correspondingly, produced a marked tendency to clearances. Heightened by the disfranchisement of the forty-shilling freeholders in 1829, clearances were to reach their climax with the famine, being further encouraged by repeal of the corn laws in 1846, by the new poor law of 1847 and by the Encumbered Estates Act of 1849. Absenteeism mounted sharply after the union. Agents and middlemen in a seemingly endless chain extracted the utmost in rents, fees and services from the tenants, holding arrears always over their heads; cottiers paid in labor for their conacre holdings. Leases for short or indeterminate periods prevailed; in 1847 the Devon Commission reported: "The greater portion of the occupiers of land in Ireland hold as tenants from year to year." Except in Ulster compensation for improvements was unknown; at the first opportunity the land was "canted" to the highest bidder. To Nassau Senior "the treaty between landlord and tenant is a struggle like the struggle to buy bread in a besieged town or to buy water in an African caravan." Against the evils of rackrenting the laborers and poorer farmers, who were also laborers, continued to react in Whiteboyism, although they were unable to bring the agrarian question to the pass at which Gladstone felt constrained to set himself the task of defining and

redressing Irish grievances. Whiteboyism in its various aspects lacked the cohesiveness of a definite organization, although its sporadic manifestations seem to have been linked by potato vine telegraphy. Only in connection with the tithe agitation of 1831-32 did Whiteboyism reach the proportions of a national movement, a movement shadowed by the religious as well as the agrarian branch of Gladstone's trifurcate upas tree.

The religious question was partly political, partly agrarian. Grattan's Parliament had repealed the penal laws and admitted Catholics to the franchise; the union had failed to fulfil the hope of Catholic emancipation. Although upper class Catholics had resented the continuance of their political disabilities, it remained for a popular demagogue to make Catholic emancipation an issue. Thwarted in his own political ambitions, a middle aged criminal lawyer named Daniel O'Connell founded the Catholic Association in 1823. The established Protestant church of Ireland was not merely endowed but empowered to levy tithes on all occupiers of land of whatever creed. Tithes and parish cess had long been objects of Whiteboy attack; not infrequently these grievances had been employed by landlords and middlemen to divert peasant attention from their own rack rents. Momentarily coupling religion and economics for a political end and aided by his stormy bilingual oratory O'Connell carried the county Clare in 1828. Fearing revolution the tories yielded; the "uncrowned king" entered Parliament at the price of the disfranchisement of six sevenths of the Irish electorate. 'To reward the peasantry O'Connell guided the "tithe war," which ended in 1838 after minor concessions, in the comedy of commutation; the landlord paid the tithe for the tenant and increased the rent. Shifted from the religious to the agrarian account the question lost interest for the Liberator, who bent his efforts to stamping out Whiteboyism and Ribbonism along with trade unionism and Chartism.

The third branch of the upas tree, the education question, was a more slender growth. While the "national schools" were successfully combating the survival of Gaelic speech, higher education in Ireland was virtually open only to Protestants, through Trinity College, Dublin University. Presbyterians preferred to go to Scotland, Catholics to the continent, although Maynooth existed with state aid to educate Catholic priests. In 1845 the Maynooth grant was more than doubled, and three non-sectarian

"godless colleges" were established, a measure which failed to solve an essentially religious question.

One other branch of the Irish upas tree, the problems of trade and industry, completely escaped Gladstone's attention, perhaps because its leaflessness permitted it to be obscured by the thick foliage of the other branches. "The Union dealt a heavy blow to trade," as O'Connell phrased it. The textile industries, temporarily and partially protected by the union duties, suffered rapid decline on their withdrawal; everywhere domestic hand loom workers were thrown out of employment; only in the north did a new linen industry grow up on a factory and machine basis. The provision trade and its dependent industries declined as the exportation of livestock was resumed. The handicrafts, which had flourished under Grattan's Parliament, were ruined by the removal of the seat of government from the Liffey to the Thames. Only brewing and distilling, the former almost exclusively for export, prospered. Whatever other factors may have played a role, it is fairly certain that lack of capital in Ireland—indeed the virtual impossibility of accumulating capital save in the north, where the Ulster custom prevailed—was of basic importance. Such industries as were established in Ireland, particularly before the removal of the union duties, were mostly established by Englishmen. Englishmen, however, had little incentive to invest in Ireland: the possibilities of profitable industrial investment in England itself still seemed inexhaustible; employers of labor were especially deterred by the reputation of the Whiteboys as a ready school for industrial trade unionism. In this latter opinion English manufacturers were encouraged by O'Connell's denunciations of Irish combinations.

The absence of industry while it intensified the agrarian problem also made for the weakness of the middle class, and this fact in turn meant the continued absence of serious nationalism. The day had not yet come for tenants and laborers to make common cause and unfurl the banners of nationalism in a struggle for agrarian reform. Herein lay the secret of O'Connell's power. He had accepted the disfranchisement of the peasantry. The handful of urban workers had never enjoyed the franchise; although they were organized in combinations, he could afford to defy and denounce them. Concerned mainly with strengthening his "tail" in Parliament and controlling the Irish patronage, King Dan was no enemy of the established order. Davitt, the

greatest foe of landlordism in Ireland, yet an ardent admirer of O'Connell, acknowledges that "he cannot be classed among those who have fought strenuously against landlordism"; nor could anyone charge O'Connell—for whom Unitarian and Dissenting mill owners in Manchester in 1836 raised a purse of £700, and who "would to God, children of thirteen years old in Ireland could earn the money which the English factory children might have earned" save for Lords Althorp and Ashley—with having been a foe of capitalism. Politically as well as socially O'Connell was conservative in the extreme. He rejoiced that he "kept Ireland free" from the "pollution" of the Chartists. Successive repeal associations were organized for an object which the "uncrowned king" himself stated to be "not worth the price of one drop of blood." His slogan, "Ireland for the Irish—God save the queen" is reminiscent of the policy of Strafford and Ormond.

Under the wing of the Repeal Association, however, there blossomed in the 1840's a vigorous nationalist movement. To be sure, Young Ireland was more in tune with the European *Zeitgeist* than with the conditions of the moment in Ireland. Inspired by Davis, guided by Mitchel and rationalized by Lalor, the movement even in its very name reflected continental stirrings rather than the aspirations of any social class in Ireland. Renunciation of England and all her works was the prime article in the catechism. Thomas Davis, poet and idealist, reacted violently against the idea that the factory system would benefit Ireland: "Oh, no! Oh, no! ask us not to copy English vice, and darkness, and misery and impiety; give us the worst wigwam in Ireland and a dry potato rather than Anglicise us." John Mitchel, chief of the Young Irelanders, who at the outset conceived of the nationalist movement as necessarily embracing all classes of the population, eventually adopted Davis' characterization of the landlords as a "filthy mass of national treason." Ardent republican and advocate of "public opinion with a helmet on its head," he was deemed worthy of transportation for fourteen years. But although his virulent Anglophobia led him to rejoice that the French insurgents of February, 1848, had renounced competition and free trade "in the sense in which an English Whig uses these words," the June days left him positive that "Socialists are something worse than wild beasts."

Of the Young Irelanders the clearest and most vigorous thinker was Fintan Lalor. Lalor defined

the spirit and aim of Young Ireland as "not to fall back on '82 but act up to '48 . . . . Not the constitution that Tone died to abolish, but the constitution that Tone died to obtain, independence, full and absolute independence, for this island, and for every man within this island." Lalor, like Tone, had no hope of countenance from the Irish aristocracy; from the middle class he hoped for sympathetic assistance, but it was to the peasantry that he turned to give the necessary drive to the movement. "The principle I state and mean to stand upon, is this, that the entire ownership of Ireland, moral and material, up to the sun, and down to the centre, is vested of right in the people of Ireland; that they, and none but they, are the landowners and law-makers of this island . . . . For let no people deceive themselves, or be deceived . . . by constitutions . . . and franchises. These things are paper and parchment, waste and worthless . . . those who own your land will make your laws . . . . The rights of property may be pleaded . . . . Against them I assert the true and indefeasible right of property—the right of our people to live in this land, and possess it."

Lalor's teachings were not fully appreciated by his associates; national not social revolution was their goal. In any case the time was badly chosen for revolution; as in 1798, it was foreign example not native ferment that produced the Tipperary rising of '48. The famine and famine fever of '46 and Black '47 had left the peasantry no energy to expend in revolt; misery and despair counseled emigration, and in a decade Ireland's population was reduced by one fourth. Interesting as a projection of the ideology of individual nationalists, Young Ireland cannot be accounted an Irish national movement. The mass of the peasantry was powerless to help or hinder this non-sectarian movement; the property qualification for the franchise was further raised in 1850, and the electorate continued to support O'Connell's band, known, now that the maestro was dead, as the Pope's Brass Band.

In the second half of the nineteenth century the Irish upas tree came to full growth. If its foliage was less verdant, its poison sap ran strong and proved the bane not only of successive British ministries but of Gladstonian Liberalism itself. Emigration, always a conspicuous Irish phenomenon, became a constant factor; although a few towns grew slightly, the heavy drain of population from the countryside produced a steady diminution in the general density of population. Notwithstanding the continued decline

of agriculture in favor of pasturage, reduction of population tended to effect reduction of the pressure for land; the peasantry was therefore in a stronger position for an economic struggle against landlordism, which with the disappearance of the middlemen loomed ever more prominently as the national grievance. In the years immediately following the famine—during which the Liberator's son had publicly averred: "I thank God I live among a people who would rather die of hunger than defraud the landlords of their rent"—Gavan Duffy's all Ireland tenant right movement was inevitably aborted; but the time gradually ripened for the more prosperous tenants to make common cause with their less fortunate fellows.

Emigration, which to some minds offered a happy solution for the Irish question, proved to be a complicating factor of far flung implications. Overseas and particularly in the United States the Irish reaped fulfilment of the angel's promise to Abraham. Whether by politics and contracts or by means more devious many out of their multiplying millions equipped themselves to possess the gates of their never forgotten enemies. The Ribbonmen, who after the Tithe War had gradually absorbed most of the Whiteboy elements, disappeared from Ireland to reappear as the Ancient Order of Hibernians. In time this and other Irish-American organizations were to play a vital role in Irish affairs.

This by-product of emigration soon nurtured disturbing fruits. In the American Civil War many Irish had fleshed their swords; their commissions dazzled the eyes of surviving revolutionists in Ireland. In 1858 James Stephens, a disillusioned Young Irelander, had founded in Dublin the Irish Republican Brotherhood; a few years later a cognate Fenian society was formed at Chicago. Deliberately the Irish Fenians through the newspaper which was founded to serve as the public organ of their secret society appealed for the aid of "the blistered hands of labour." "It is a waste of time and labour, or worse, to endeavour to arouse the upper and middle classes to a sense of the duty they owe their country." With the farmers the Fenians had little to do; their agitation centered in the towns among the artisans and laborers, with the result that in the 1860's the landlords enjoyed a temporary surcease from agrarian disturbances. The Fenians were not socialists even in the limited agrarian sense of Lalor; their program was purely and romantically nationalistic. Inspired by the news from Russia and fed with

tales of the thousands of armed men ready to sail from America, the I. R. B. plotted dire conspiracies, which eventuated in the pitiable collapse of 1867.

Yet Fenianism produced results in England, in Ireland and in America. In England Gladstone was moved to attempt the felling of the upas tree. Characteristically the Liberals addressed themselves first to the religious question. In 1869 the Protestant church of Ireland was disestablished and in part disendowed; in the general readjustment the Maynooth grant and the larger *regium donum* to the Presbyterians were abolished; the measure interested churchmen, Orangemen and Catholic bishops but left the mass of the population unmoved. The Land Act of 1870 did not accept what the Liberal prime minister in 1864 had called "communistic views disguised under the term of tenant right"; it merely legalized the Ulster custom in so far as it was practised and provided compensation for improvements if the evicted tenant could afford to prosecute his case in the courts. The Irish University Bill of 1873 was defeated with the aid of the Irish members. With the branches trimmed Gladstone hoped to remove the political trunk by continued coercion. In Ireland the amnesty agitation for the release of Fenian prisoners swept Isaac Butt into the leadership of the Irish parliamentarians. Under his cautious guidance Irish members at Westminster adopted the policy of independent opposition. To pressure for a federal solution of the political problem, for which the epithet home rule was coined, Butt linked a revived agitation for tenant right, which crystallized as the demand for the "three F's." In America Fenianism produced the Clan-na-Gael, ever a ready supporter of revolutionary agitation for Irish independence.

Michael Davitt, a Fenian, was chiefly instrumental in effecting the close cooperation between agitation in Ireland and Irish organizations overseas. The "new departure" of 1878, which put at the disposal of the leaders in Ireland generous sums of American money, coincided with the supersession of Butt by another Protestant champion of home rule; Parnell and his lieutenants at once embarked on the policy of obstruction in Parliament, driving out of the organization the more moderate of Butt's following. In America Davitt's proposals met with a response embarrassingly overenthusiastic. The American revolutionary Irish had no sympathy with mere parliamentary agitation as a substitute for revolutionary conspiracy but were more than ready

to welcome vigorous agitation against landlordism. In 1879 shortly after Davitt's return from America the Land League was successfully launched in Mayo, whence its operation soon spread to other parts of Ireland. In the antipodes as well as in the United States supporting land leagues were formed; the *Irish World*, the *Clan-na-Gael* and the A. O. H. poured money into Ireland. The Land League campaign differed in many essentials from the earlier Whiteboy disturbances; the movement attracted all elements of the peasantry, including the more well to do farmers; its methods despite the horror excited by the new word boycott were in the main legal; it worked in the open, countenanced by Parnell and other Irish political leaders and even by one of the archbishops. Rome's attempts to interfere against Parnell and the Land League tended to "make Peter's pence into Parnell pounds." The land agitation, with its slogan "The land for the people," was the most revolutionary movement in nineteenth century Ireland. O'Connell had intimidated the Iron Duke, but it needed Michael Davitt, the friend of Henry George, to convince English Liberals that under certain circumstances a man might not do what he would with his own. The Land Act of 1881 embodying the principle of the "three F's" established a dual property right in the land. Although unsatisfactory to the Land Leaguers—and still more to the Parnellites, unable to admit that any good could come from a parliament at Westminster—the act, followed in 1885 by the Ashbourne Land Purchase Act, went far toward removing the grievances of the more prosperous farmers. Something was also done for the agricultural laborers by the series of laborers acts beginning in 1883.

The politicians, who had curbed Davitt's enthusiasm for a no-rent campaign before the passage of the Land Act, found the weapon a failure when used for purely political ends. Hampered by the Phoenix Park murders, the Invincibles and the suppression of the Land League, the constitutionalists almost regretted that they had ever hearkened to Davitt's ringing denunciation of a policy that would ask "our peasantry to plod on in sluggish misery from sire to son, from age to age, until we by force of party power may free the country." The Parnellites had failed to wreck the bill, but the circumstances of its passage and the coercion policy that accompanied it fed the agitation, assisted by the revival of the National Land League as the National League. Extension of the franchise in 1884-85 merely strengthened

Parnell, who steadily augmented his phalanx at Westminster. In 1886 the impossibility of forming any ministry without Irish support impelled Gladstone's Liberals to commit political suicide by sponsoring the First Home Rule Bill.

For an almost uninterrupted period of twenty years of "resolute government" the Unionists strove to "kill Home Rule with kindness." Their initial Land Purchase Act was amended and extended, culminating in the Wyndham Act of 1903. The fundamental difficulties of the small holder, which lay beyond the direct reach of government, were recognized in the creation in 1899 of the Department of Agriculture under the guidance of Horace Plunkett, since 1889 the apostle of cooperation. The Local Government Act was extended to Ireland in 1898. The Irish, however, remembered the kicks and forgot the kindness. Although the Parnell split of 1890 was but ill healed by the recognition of Redmond's leadership in 1900 and although funds from America temporarily dried up, the Nationalist party continued to be the chief vehicle of Irish political expression. Ignored by the resurgent Liberals, save for the passage of the virtually non-partisan Birrell University Act of 1908 and a few acts in further remedy of details of the land problem, the veterans of Parnell's struggles were enabled by the parliamentary situation consequent on the elections of 1910 to wring from England the goal of their ambitions—the Home Rule Act of 1914, providing for the establishment in Dublin of a parliament frankly subordinate to its parent at Westminster.

If the Nationalist party reflected the national aspirations of Ireland, the aspirations of Irish nationalists were finding expression in the Irish Ireland movement. Landlordism had suffered a mortal blow; slowly but inevitably it was being extirpated in Ireland—on terms which left ex-landlords and ex-agents the wealthiest and socially most considerable class in the country. The Church of Ireland had been disestablished, but the Protestant ascendancy remained socially intact. Although the local government patronage was surrendered to the Catholics in 1898, the "county class" retained its impregnable position. At the same time the material improvement of the farmers' position was reflected on the shopkeepers; manufacturing industry outside the Belfast area made little progress, but an important and well to do middle class developed. Not being gentlemen, the middle class youth must find some new avenue to social standing; and this they sought in Irish Ireland. The Gaelic Athletic

Association founded in 1884 excluded agents of the Castle garrison from its clubs and strove to place hurling and "Gaelic football" on a level superior to tennis and cricket. The Gaelic League founded by Douglas Hyde in 1893 preached the superiority of the Celtic language and literature to the Saxon; in 1913 the National University made Irish technically compulsory. A new school of Irish literature, using admirable English, clothed Irish mythological figures in Grecian garb or wove dramas racy of the soil. In 1896 an immigrant son of an Irish emigrant, James Connolly, attempted the formation of an Irish Socialist Republican party; from 1898 to 1903 his *Workers' Republic* preached Karl Marx in Celtic terms, spiced with emphasis on Tone and Emmet, Mitchel and Lalor. Another returned emigrant, Arthur Griffith, through the pages of the *United Irishman*, later *Sinn Féin*, preached his fanatically narrow "Hungarian policy," derived mainly from Friedrich List and Ferencz Deák; least national in its conception and policy of all the phases of the Gaelic revival, Griffith's organization was destined to become through the operation of forces which he labored vainly to combat the dominant mouthpiece of Irish nationalism. Even in 1910 the republican left wing of Sinn Féin through *Irish Freedom* lent countenance to what Griffith venomously dismissed as "English trade-unionism in Ireland" and queried the patriotism of Irish industries built on underpaid labor. Although insisting that "the independence of this country is the first practical step towards the building up of a decent civilisation," *Irish Freedom* viewed the Dublin labor war of 1913 as a "spiritual revolt"; like the young Irelanders, the republicans were prepared to hate "imported" capitalism. It was mainly members of this group who with a few survivors of the I. R. B. and a large following of constitutionalists organized in 1913 the Irish National Volunteers, the grateful response to the inspiration provided by Carson and the Ulster Volunteers; control was soon taken over, however, by Redmond and the parliamentary party.

Far different was the reaction to capitalism of another element in twentieth century Irish nationalism. Trade unionism in Ireland had been a spontaneous growth closely akin to trade unionism in England; its progress had been aided by the progress of the larger movement, for English trade unions in self-protection had found it expedient to build Irish branches. An Irish Trades Union Congress founded in 1894 had functioned

virtually as an adjunct to the Nationalist party. In 1907 the labor movement took on fresh life with the rise of Larkinism and the organization of unskilled labor. Fought by Griffith and Redmond alike, Larkinism developed a nationalism of its own, welcoming Connolly back from America in 1910. The great Dublin lockout of 1913-14 marked a vital turning point: the Trades Union Congress renounced allegiance to Redmond and formed itself into an Irish Labour party; Connolly, the nationalist, in Larkin's absence assumed direction of the Transport Union and its protégé, the Irish Citizen Army. Taking advantage of the split in the National Volunteers, Connolly and Tom Clarke, of the I. R. B., won the support of the republicans in Sinn Féin. Despite the frantic opposition of Griffith this triangular combination of organized labor, predominantly unskilled, of the old line physical force revolutionaries, who brought the money of the Clan-na-Gael, and of the Irish Ireland intellectuals who controlled the Irish Volunteers, sought to turn England's difficulty into Ireland's opportunity. The Easter rising of 1916 was foredoomed to failure, but its ruthless repression swung national sentiment from constitutionalism to warfare. A metamorphosed Sinn Féin gave birth to the Irish Free State.

The establishment of the Free State was strenuously resisted by fanatical republicans and ruced by many who had looked forward to the establishment of a new social order. But although more potent than the penniless Communists, who welcomed the ripple of soviets of agricultural laborers and creamery workers, the Irish Republican Army, largely financed from America, could make no headway against the forces of Great Britain, whose artillery was now operated by men in the green uniforms of Saorstát Éireann. The labor movement, again dominated by the skilled workers, set its face against radical action. A Labour party in the Dail has not prevented the abridgment of British social legislation. The Free State quickly adopted tariffs and turned to the Shannon to aid industrial development; but it found that the consular service of Erin could for the most part be best handled by the British Empire. The remnant of the landlords were given short shrift; but British sports are embraced by gentlemen of a new definition, who may be sons of publicans. The Irish language has proved an embarrassment, although it had to be made an official language; literary ferment has been replaced by rigorous censorship; "Irish Ireland," the iridescent dream born of the ro-



mantic times of struggle, has become a nightmare in the mundane days of self-control. Religion, ever an extraneous injection into the material problems of Ireland, is not a present issue; with blatantly sectarian Northern Ireland on her flank the Free State has not yet followed the example of so many Catholic nations in open struggle with the church. The peasants and the shopkeepers, the bulk of the people, have inherited the land; to them as to Sydney Smith "Erin go bragh" has ever meant "Erin go bread and cheese."

An aberrant aspect of the Irish question is presented by Belfast. A portion of Ulster was so thoroughly planted at the beginning of the seventeenth century that a large proportion of the lower classes in that region is Scotch Presbyterian. The infiltration of Irish into the planted area could not be prevented; in particular the heavy emigration of Scotch-Irish to America in the eighteenth century opened the way for the return of numbers of Catholic Irish peasants. This fact gave a freakish twist to Whiteboyism in the north, the Presbyterian tenantry resented the competition of the Catholic Irish; under the name of Peep o' Day Boys, later Orangemen, they initiated a series of attacks on their rivals, forcing them to organize as the Defenders, later Ribbonmen. With the rise of industry in the Belfast area this guerrilla warfare of the two creeds was carried over into the ranks of the urban workers. The Ulster linen industry aided in the growth of the shipbuilding industry, the one employing the women, the other the men; the sexual division of labor and the temptation of an increasing family wage tended to depress wage scales and the position of the workers in general. To Ulster employers the creed of their workers was a matter of indifference, their wages a matter of vital importance. Elsewhere trade unionism might force wages up; but in Belfast, where with monotonous regularity religious processions provoked rioting between the two portions of the working class, trade unions found it difficult to function. Ulster business men feared economic separation from Great Britain and the rule of a farmers' parliament at Dublin; hence their enthusiasm for the Churchill slogan of 1886, "Ulster will fight, and Ulster will be right." To the Orange workers, whom Birrell described as having no more religion than a billiard ball, this meant simply "To hell with the pope." The rioting that year reached unprecedented dimensions. Twice, in 1893 and in 1907, the warring workers

fraternized openly, but these were special occasions that constituted reversals of the general rule. The "home rule means Rome rule" agitation and the drilling and arming of the Ulster Volunteers brought a return of the days of 1886. Ulster solemnly covenanted to prove her loyalty to Britain by resisting to the death the application of British law. The World War and the suspension of the Home Rule Act brought a reconciliation so complete that in the first years after the war a united trade union front forced wage scales even above Glasgow and Dublin levels. On July 12, 1920, at a monster mass meeting Carson carefully identified Sinn Féin, Catholicism and Labor as a trinity not to be tolerated "be the consequences what they may." The consequences were two years of violence, the expulsion of Catholics from virtually every form of employment, the disruption of trade union organization and the rapid decline of wage scales. In the meantime Ulster accepted the Better Government of Ireland Act of 1920 and sealed her separation from agrarian Ireland.

JESSE DUNSMORE CLARKSON

See. GOVERNMENT, section on IRISH FREE STATE; NATIONALISM; DOMINION STATUS; CATHOLIC EMANCIPATION; ABSENTEE OWNERSHIP; HUNGER STRIKE.

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IRNERIUS (c. 1055-c. 1130), Italian jurist. Irnerius was born in Bologna, where he became professor of rhetoric and dialectic at an early age. His fame came to the attention of the countess Mathilda, who urged him to study law. His life from approximately 1076 to 1090 is a matter of controversy among modern scholars. Fitting and others (such as Besta, Palmieri and Vinogradoff) allege that he studied law at the school in Rome, where he later taught, and that about 1084 because of political strife he returned to Bologna, where after a period spent in research and writing he began to teach about 1090. The better view, advanced by Savigny and affirmed by Pescatore, Patetta and Kantorowicz, seems to be that Irnerius studied law as an autodidact at Bologna, working through practically all the *Corpus juris* before beginning to teach there. Documents from 1113 to 1118 reveal him acting in a judicial capacity; after a visit to Rome in 1118 he taught at Bologna until his death.

Uncertainty also exists concerning the works of Irnerius. All are agreed that he was the author of a great portion of the marginal and interlinear glosses to the *Corpus juris* and that he was the compiler of numerous *Authentica*, or notes, which made use of the constitutions in the Novels to indicate those statutes in the earlier compilations of Justinian that had been supplanted. Fitting edited and attributed to Irnerius works

of a different type, more comprehensive in scope and yet more theoretical in nature; for instance, the *Questiones*, *Summa codicis* and *De aequitate*. Others, in agreement with Fitting, have either edited or attributed to Irnerius works of a similar nature. Pescatore, Patetta and Kantorowicz deny that the edited texts were written by Irnerius, and Kantorowicz even holds that no works outside the glosses and *Authentica* were written by him, but that he did transcribe the so-called *Codex S* (now lost), the fount of all the vulgate manuscripts of the *Corpus*.

Irnerius' great contribution to jurisprudence was undoubtedly the establishment of the law school at Bologna, which focused its attention upon intensive study of Roman law and the development of jurisprudence in all its aspects. The personality and ability of Irnerius within a few years made Bologna the center of legal thought in Italy, and his students, the four doctors, extended its renown over Europe.

A. ARTHUR SCHILLER

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*Consult:* Fitting, Hermann, *Die Anfänge der Rechtsschule zu Bologna* (Berlin 1888) p. 89-106, Meynial, E., in *Revue historique de droit français et étranger*, vol. xxi (1897) 339-56; Kantorowicz, H. V., "Über die Entstehung der Digestenvulgata, Ergänzungen zu Mommsen" in *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Romanistische Abteilung*, vol. xxx (1909) p. 254, n. 10, p. 270, n. 1, and vol. xxxi (1910) 14-40.

## IRON AND STEEL INDUSTRY

HISTORY AND PRESENT ORGANIZATION.....MEREDITH GIVENS

LABOR CONDITIONS

United States.....COLSTON E. WARNE

Other Countries.....HORACE B. DAVIS

HISTORY AND PRESENT ORGANIZATION. Although it is the center of a galaxy of industries, the heavy iron and steel industry comprises the normally integrated processes of smelting, refin-

ing and shaping iron and steel. Its products—pig iron, and semifinished steel in the form of ingots, structural shapes, bars, tubes, rails, plates, strips, sheets, wire rods, forgings and

castings—constitute the raw materials for further fabrication by the metal or engineering trades, from which the heavy iron and steel industry is to be distinguished. Because of its unusually great integration of operation and concentration of control the industry includes many other related activities. All of the larger companies mine their own ores and fuels, most of them operate extensive transportation facilities, while some embrace under unified control all the related and essential processes from mining to the final manufacture of ordnance, the construction of ships and the output of other products. In addition the industry has many by-products. Thus in 1930 the United States Steel Corporation controlled from one sixth to one fifth of the American production of Portland cement utilizing its own blast furnace slag; the industry furnishes the bulk of the important coal and tar by-products of the coking process and a substantial volume of gas for light and power.

Iron especially in the form of steel provides the structural basis of industrial civilization. Iron and coal are inseparably associated with modern technology and have been decisive instruments in the growth of capitalism, particularly since their technological interlocking in the modern steel industry. It is this development which has made possible the intensive exploitation of the mineral accumulations of the ages and the tremendous acceleration in the rate of production and consumption which underlie the recent development of industrialism. The increasing consumption of iron and steel measures the onward sweep of the machine age. In the United States the industry produced 108 pounds of pig iron and 34 of steel per capita in 1878, 638 pounds of pig iron and 592 of steel in 1909 and 786 pounds of pig iron and 1042 of steel in 1929—an increase of more than 500 percent in pig iron and nearly 3000 percent in steel. This enormous expansion in the output of iron and steel has been the primary factor in the conquest of industry by machinery, the growth of industrial integration and mass production, the concentration and trustification of industry, the great changes in consumer habits and the rapidly increasing urbanization of modern life.

In addition to the fact that it is the basis of other industries, the heavy iron and steel industry ranks among the foremost of the major industries in all highly industrialized nations. In the United States since 1919 iron and steel and their products have occupied third place in

the fourteen major industrial groups as classified by the census, exceeded in total value of production only by foods and textiles, although closely pressed by the machinery industry, and have alternated from third to fourth place in "value added by manufacturing." In 1929 blast furnaces, steelworks and rolling mills had an output comprising 5.9 percent of the total value of American manufactures and employed nearly 5 percent of the wage earners engaged in manufacturing. If machinery and allied products are included, the iron and steel industries surpass all others in value of production.

The almost infinite diversification in the modern use of steel—in the metal trades, in the manufacture of machinery, automobiles and ordnance and in thousands of other major and minor uses—is one of the most characteristic aspects of the steel age. All industries are dependent upon iron and steel either for machinery or raw materials or both. In the United States for the ten-year period 1922 to 1931 the railroad, construction and automotive industries were the predominant consumers of steel, absorbing over one half of the total, as shown in Table 1. The sharpest increase in the consumption of steel was in the automotive industry because of its recent great expansion; in 1929 it consumed 52 percent of the output of malleable iron foundries as well. Greater consumption by the construction industry reflected not only the expansion in building but also the increasing use of steel as a substitute for other materials. The railroads have always been important consumers of steel, but their relative importance in the steel market declined seriously after the wartime shortage had been made up, as they were unable to extend their lines mainly because of increasing competition from alternative methods of transportation. On the other hand, agriculture has increased its consumption of steel as a result of the agricultural crisis and the decline in prices which has accelerated the pace of mechanization. Although a considerable amount of iron and steel appears in consumption goods, most of the product takes the form of capital goods, reflecting the enormous fixed capital requirements of modern industry and its essentially metallurgical character.

An important consumer of iron and steel which does not appear in the statistics on the distribution of its uses is the munitions industry. Especially since the introduction of firearms and ordnance iron has furnished the sinews of war and constituted the basis of mili-

TABLE I

PERCENTAGE DISTRIBUTION OF FINISHED STEEL TO PRINCIPAL CONSUMING GROUPS IN THE UNITED STATES, 1922-1931

CONSUMING GROUPS	PER- CENT- AGE	1922	1923	1924	1925	1926	1927	1928	1929	1930	1931
Construction	15.6	11.8	13.3	14.4	15.3	13.2	14.9	15.7	14.7	17.8	16.8
Automotive	13.9	8.9	10.1	11.1	14.5	14.7	13.3	15.4	17.6	14.1	14.8
Railroads	21.0	23.9	30.0	26.7	21.7	22.7	19.9	17.7	18.4	17.0	14.6
Oil, gas, water	9.1	14.8	10.8	8.3	7.9	6.6	8.9	8.4	9.0	9.5	9.7
Exports	5.4	7.8	6.3	6.1	4.5	5.4	5.4	5.9	5.8	4.3	4.1
Food and packing	5.0	4.2	3.7	4.8	4.2	5.3	5.2	4.8	4.7	5.8	7.9
Jobbers and warehouses	7.5	•	•	•	•	10.5	12.7	10.8	11.1	12.2	12.7
Agriculture	3.9	2.5	2.4	3.5	3.0	2.7	4.3	6.3	5.3	4.5	3.6
Machinery	3.2	2.8	2.5	3.7	2.7	2.6	2.8	3.5	3.8	3.8	3.4
All other	15.4	23.3	20.9	21.4	26.2	16.3	12.6	11.5	9.6	11.0	12.4

\* Figures not available.

Source: Compiled from data in the *Iron Trade Review and Steel*.

tary power. Particularly in Europe the iron and steel industry has been intimately identified with the production of munitions and the growth of militarism. In the Franco-Prussian War the Krupp works' improved ordnance was an important factor in Germany's victory. The World War was fought with steel, and one of its prizes was the iron mines of Lorraine. The Central Powers could not have fought as long and effectively as they did had not Germany been the greatest steel producer in Europe mainly by virtue of the union of the iron of Alsace-Lorraine and the coal of the Ruhr within its borders. Lorraine had been taken from France in 1870, but the strategic industrial and military importance of the prize was not appreciated until years later. During the World War barbed wire for entanglements, steel rails for the roads of transport and pursuit, steel plates for submarines, armor for tanks and battleships, were as indispensable as projectile steel, ordnance, small arms and ammunition. Minor steel producing countries, such as Italy, were relatively ineffective because of the difficulty with which these essential supplies were obtained. The weight of the American industry decisively turned the scales in favor of the Allies. No modern nation can become a first class military power without a highly developed iron and steel industry.

Although iron has been of overwhelming economic importance only during the past one hundred and fifty years and steel only during the past fifty years, iron has been an indispensable element in technology since it was first smelted three or four thousand years ago. Technologi-

cally the importance of the metal lies in its abundance, its strength and malleability and in the fact that for many uses it has no substitute. The slow steady growth of the industrial arts is nowhere more clearly demonstrated than in the history of iron. Prehistoric fires probably drew iron from the rocks quite accidentally; iron tools were used by primitive peoples. The use of iron was preceded by the use of copper and bronze, although in some cases the order was reversed. In the primitive open forges and bloomeries the impurities of iron were slowly "burned" out and a disappointingly small amount of pasty metal—a variety of the modern wrought iron—was ready for hammering, drawing and shaping. Uniting the two primary stages of iron manufacture—smelting and shaping—the early iron makers fused and softened the balls of malleable iron and hammered out their own shapes and implements for industry and war. For thousands of years the open wood or charcoal fires of the forge, or bloomery, was the sole known method of obtaining iron, the only progress during that long period taking the form of minor improvements in the bellows and other auxiliary apparatus.

On the basis of these primitive methods (which still persist in remote parts of the civilized world and in economically backward countries) the ancient civilizations developed an important iron industry, which produced an excellent quality of wrought iron and steel used mainly in the manufacture of military and agricultural implements. The industry reached its highest development in the Roman Empire, with the main producing centers in Italy, Spain

and Britain. There was an active international trade both in iron ores and in iron products. In Roman Italy the craft of the smith was highly developed; production was commonly carried on in small shops with a single forge, an artisan and a few apprentices, and smelting and manufacture were combined with the sale of the final products in which the shops specialized. Implements were wrought by repeated heatings and forgings on individual anvils. Prices were high in contradistinction to those of copper; and the artisans were usually prosperous and occupied an important social-economic status. Although in some places manufacturers gathered many smiths together under one roof, the factory system in the iron industry was negligible. Capitalistic merchants, however, bought up part or all of the output of independent artisans and sold it throughout the world. The most important use of iron was in the manufacture of implements of war; the armies had their own smiths and the government participated in the industry, although it was left mainly to private enterprise. In the later Roman Empire the government took over the exclusive manufacture of arms and armor and concentrated it in large state factories.

During the Middle Ages both the technology and economic organization of the iron industry remained practically unchanged, except for the improvements in furnace construction, the introduction of the Catalan forge and of the use of water power in driving the bellows and the hammers. Great skill was attained by the Arabians, Spaniards, Germans and Swedes in the manufacture of iron, particularly in the making of swords and ornamental ironwork. The forges, however, continued to be highly wasteful of iron, fuel and labor. It was not until the fourteenth century that molten iron for direct casting was produced in improved smelting furnaces of European iron makers. This was accomplished by means of larger furnaces with higher stacks, by forcing an air blast into the furnace by the use of water power, and by better heat conservation—all the result of attempts to save fuel and labor. The first castings were of poor quality and the uses of cast iron were not at once appreciated. It was gradually discovered that iron smelted directly from the ores requires further refinement for the production of really satisfactory castings. This led eventually to the divorce of smelting and casting and the growing importance of iron founding. The origin of the blast furnace, a vertical cylindrical crucible in which iron is

separated from the ore by smelting in direct contact with the fuel and flux, is enveloped in uncertainty. In the latter part of the mediaeval period the Germans developed the *Stückofen*, an improved form of the Catalan forge which they had built to a height of ten to sixteen feet. This improvement was the direct antecedent of the blast furnace, which is known to have been used in Belgium about 1340. Smelting practise was improved and perfected during the fifteenth and sixteenth centuries by the Germans, Belgians and the French; and gradually the Catalan forge and its improved form, the German *Stückofen*, were both superseded by the charcoal blast furnace. The greater economy of fuel and labor, the larger output and the greater diversity to which the greater supplies could be put more than compensated for the dissociation of smelting from the forging of malleable iron.

During the sixteenth century the most important use of casting was in the making of cannon, which revolutionized the technique of warfare. The demand for more and improved cannon greatly stimulated the iron industry. At this time the industry had reached its highest development in Germany, both in quality and quantity of iron output. A considerable capitalistic organization prevailed in the mining of iron and the sale of the final products, although on a much smaller scale than in the production of silver and copper, in which the Fuggers operated mines, smelting works and rolling mills. It was from Germany that England imported the blast furnace and other improved methods of iron making.

The next phase of the development of the iron industry was bound up, both as cause and effect, with the industrial revolution, which was largely a revolution in metallurgy and power. By the beginning of the eighteenth century the primitive bloomery was obsolete in Britain; it was replaced by the more complex sequence of operations represented by the blast furnace, the forge and the rolling and slitting mill. The iron industry was third in importance among British manufactures, mining and smelting 180,000 tons of ore annually and giving employment to 200,000 people in mines and manufactories. But the industry was hampered by the "tyranny of wood and water"—wood to provide charcoal and water to transport raw materials and products and operate the hammers and mills and furnish the blast for the smelting furnaces. Establishments were therefore widely scattered. The extent to which industry was hampered by the scarcity of charcoal, because of deforestation

and restrictions to protect forests from further ravages, is indicated by the fact that only 17,350 tons of iron were produced in Britain in 1740. Pit coal was used in iron smelting by Dud Dudley as early as 1619 and the first Abraham Darby established the commercial use of coke in 1709, but it was not until sixty years later that coke came into general use in smelting despite the economic need for a new fuel. In the midst of its decline the British iron industry was revived and transformed by the introduction of mineral fuel in smelting, the application of the steam engine to furnish the blast and the rapid advance in mechanical engineering—all phases of the industrial revolution, for which more and cheaper iron was the indispensable basis.

During this period the great change in the refining and shaping of iron was initiated in 1784 by Henry Cort. Building upon the experiments of others Cort introduced the puddling furnace, which permitted the use of fuels other than charcoal and furnished hot malleable iron directly to the rolling mill in a single continuous process. Until then malleable iron had been made either by the direct process or from pig iron by reheating in the forge. Cort had been among the first to investigate the application of Watt's engine to the forge hammer. His inventions now substituted a reverberatory puddling furnace for the hearth of the forge, grooved rolls for the hammer and the chemical removal of impurities in the iron for the method of removal by sledging. The puddling furnace reduced the cost of manufacture and yielded a larger quantity and more uniform grade of iron; the new rolling mill could handle heavier blooms and greater lengths and could turn out a greater variety of shapes and sizes of rails, bars and plates than had hitherto been possible. The result was startling. Hitherto a tilt hammer had with difficulty produced a ton of bars in twelve hours; but now fifteen tons of puddled metal could be passed through the rolls in the same time, and iron produced with pit coal could be substituted for charcoal iron for all purposes except the manufacture of crucible or cementation steel.

Technological changes in the iron industry produced corresponding changes in its economic organization in Great Britain. While the industry nowhere passed through the guild stage prior to the factory system (the guilds of ironmongers were fabricators and not producers of iron) and was dominated by capitalists who owned more or

less extensive works and paid wages to workmen, it remained a relatively small scale and decentralized industry until the close of the charcoal era. With the breaking of the "tyranny of wood and water" by the use of coal adjacent to iron mines the scattered establishments gave way to large and integrated concerns which mined the ore and coal, smelted, refined, rolled and slit the iron in its finished form of plates and rods. Smelting and refining were again united in the new integrated processes. Iron-works were concentrated near the coal fields, larger capital was invested and single works frequently employed half a hundred or more men. Landed proprietors, who formerly had participated actively in the industry, now leased their coal and iron lands to industrialists and provided most of the fixed capital as absentee owners. Thus comparatively small capital of their own was required by the active industrialists, most of whom had been metal traders, as in the case of many successful craftsmen in Sheffield and Birmingham seeking control over sources of raw materials. As fixed capital requirements increased amalgamations became numerous, and the industrialists early formed associations to regulate the business. Profits were very large, both for the landowners and the active industrialists. Upon retiring many of the latter engaged in banking and financing, thus establishing an early and intimate association between the iron industry and finance.

Under the influence of its own higher productivity, declining prices and the demands for iron of an increasingly industrial economy, the iron industry expanded its output. By 1788 Britain's 59 coke furnaces produced 53,800 tons of pig iron as against 14,500 tons of charcoal iron made by 26 furnaces. The total output of pig iron in Britain increased from 68,000 tons in 1788 to 250,400 tons in 1806, Swedish and Russian iron were no longer imported, and the production of charcoal iron almost disappeared. Output kept on mounting, stimulated by the demand for munitions during the Napoleonic wars and the increasing use of the steam engine, machinery, water pipes and gas apparatus. The decline in prices resulting from greater demand and output was accelerated by increasingly higher productivity due to a series of mechanical and other improvements, particularly the Neilson hot blast introduced in 1828, a device to economize heat which resulted in a great saving of fuel, higher smelting temperatures, more

rapid working and a large increase in furnace output. This decline in the price of iron was one of the most important factors in the development of manufacturing. Minor improvements in processes were introduced by foreign manufacturers (the French use of furnace gases to heat steel, for example, introduced in 1811); but although iron production grew rapidly on the continent, the iron industry at this time was predominantly British, the basis of Britain's industrial supremacy and of its leadership as the workshop of the world. The industry received another tremendous impetus from the introduction of railroads in the 1830's, both because of their demand for iron and of the provision of cheaper and better transportation. Moreover the construction of railroads in economically backward countries increased Britain's exports of iron as well as the export of capital to finance construction of the railroads.

Meanwhile in the vast forests of North America the iron industry persisted in the use of charcoal for one hundred years after that fuel had become obsolete in England. By the middle of the eighteenth century the British colonies were producing almost as great a quantity of pig iron, bars and blooms as the mother country, perhaps from a fifth to a third of the world output during this stage of the charcoal era. England encouraged the colonial production of pig iron and discouraged the manufacture of iron, but there is no evidence that these tactics relieved the situation of the ironmasters in the mother country. After the War of Independence American production declined and the new country did not regain its relative position for a century. Production was mostly in the form of cast iron produced in small charcoal furnaces making from a few tons up to 25 tons per week. In contrast with the contemporary progress in Great Britain there was little improvement in American smelting practise between 1790 and the introduction of anthracite in the 1830's. As late as 1825 the use of mineral fuel was unknown, and the census of 1850 enumerated only 4 furnaces burning coke. Throughout the charcoal era the iron industry was a rural one; the furnaces and forges were scattered in every state in the union, although the establishments were more numerous in areas where surface outcroppings of ores were readily available.

In the United States the first great improvement in the production of iron came with the introduction of anthracite in smelting, first used in 1812 but not an important factor until

1840. The use of this peculiarly American fuel in smelting enabled the furnace stack to bear a much heavier burden of ore, flux and fuel than had been possible with the fragile charcoal. Anthracite iron maintained its ascendancy until after the Civil War. A thriving iron industry concentrated in the anthracite fields of eastern Pennsylvania with easily accessible markets. The introduction of anthracite prepared the expansion of the American iron industry, which was stimulated by the manufacture of solid iron rails and the rapid growth of railroad construction. Railroads absorbed from one third to one half of the iron output; the demand from other industries was still small because of the relatively slow pace of industrialization. English competition was keen and the American industry insisted that its existence depended upon high tariffs. Nevertheless, in 1850 approximately 60 percent of American iron needs were supplied by imports. Despite continuous tariff protection the American iron industry in the years 1850 to 1860 was still a poor second to the British industry, but the Civil War gave the American output an enormous stimulus.

In Germany the industry forged rapidly ahead after 1840, mainly as a result of the rapid growth of railroads and of a series of inventions which improved materially the quality of cast iron and made it in some respects superior to the British product. The rise in the output of German iron was interrupted by the world crisis of 1857, after which the development was resumed at a more rapid rate, stimulated by the increasing manufacture of improved ordnance by the Krupp works. In 1860 Germany produced 522,000 tons of pig iron in comparison with 821,000 tons produced in the United States and 3,890,000 tons in Great Britain. In France the industry was also expanding rapidly, although on a much smaller scale than in the other major producing countries. At the outbreak of the Franco-Prussian War the iron industries of both Germany and France had reached approximately their maximum development with the ores and technical practises then prevalent.

In 1870 Great Britain was still the world's leading producer of iron; it produced 5,964,000 tons of pig iron while the American output was 1,665,000 tons and the German 1,240,000 tons. As the figures in Table 11 indicate, the situation was completely changed within thirty years. In the decades between 1860 and 1890 the American iron and steel industry began to outstrip the other major producing countries. The Amer-

TABLE II

PRODUCTION OF PIG IRON IN PRINCIPAL PRODUCING COUNTRIES, 1740-1930  
(In thousands of gross tons)

YEAR	UNITED KINGDOM	GERMANY*	UNITED STATES	WORLD TOTAL
1740	20	18	1	160
1790	68	30	30	280
1800	190	39	40	460
1810	250	45	55	620
1820	368	89	110	1,010
1830	677	118	180	1,590
1840	1,396	167	290	2,770
1850	2,249	396	564	4,470
1860	3,890	522	821	7,300
1870	5,964	1,240	1,665	11,840
1880	7,749	2,429	3,835	18,160
1890	7,904	4,035	9,203	26,750
1900	8,960	7,429	13,789	39,810
1910	10,012	12,905	27,304	64,760
1920	8,035	6,299	36,926	62,850
1930	6,192	9,542	31,752	79,400

\* Includes the Saar and Upper Silesia through 1910

Source. Figures for 1740-1860, from Hull, George H., *Industrial Depressions* (rev. ed. New York 1926) p. 206-98. Figures for 1870-1930 compiled from *Statistics of the Iron and Steel Industries*.

ican producers, competing among themselves for new records, embarked upon a spectacular campaign of furnace driving; the reports of mounting daily output per furnace were greeted with incredulity in England. During each of these decades the annual production of American pig iron doubled. The British output increased considerably during the same period, but it could not meet the pace set in the United States. By 1890 American production exceeded the British, and the United States became thereafter the leading producer of iron and steel. This phenomenal growth took place in spite of seemingly insuperable obstacles to the use of ores mined thousands of miles from coal, manufacturing facilities and markets.

At the basis of the increasing output of American iron and steel was the amazingly swift tempo of the country's industrialization. Horse power in manufacturing rose from 2,346,000 in 1869 to 5,939,000 in 1889 and 10,098,000 in 1899, this rise reflecting an enormous increase in the use of machinery. Railroad mileage rose from 30,626 in 1860 to 163,597 in 1890, an unparalleled growth which would have been impossible except for the advance of cheaper tonnage steel. The expanding agricultural machinery industry also required large amounts of iron and steel; and the output of metal consumption goods mounted steadily. These demands the iron and steel industry was able easily to meet because of its large reserves of coal and iron,

increasing integration and efficiency of operation and almost prohibitive tariff duties.

In Germany also the industry developed rapidly. In the ten years after the annexation of Alsace and Lorraine with their great stores of iron ores the German output of pig iron doubled and continued to increase almost as rapidly as in the United States. This growth reflected the general expansion of industry in Germany (including railroad development) and progressive specialization in the manufacture of iron and steel products, such as cutlery and ordnance. By 1910 the German output of pig iron exceeded the British—12,905,000 tons as against 10,012,000 tons. The easy economy of production in Britain, where adjacent raw materials, iron and steel mills and consuming industries had long formed a fortuitous union, had apparently reached the elastic limit of expansion. The world's pioneer iron and steel industry was now unable to compete on even terms with the resources and technique of the United States and central Europe; this was an important factor in the relative decline of British manufactures and the decline of Britain as the workshop of the world. Meanwhile the iron and steel industry had been developing rapidly in France, Belgium and Sweden. In 1913 the per capita consumption of iron and steel (in pounds) was: United States 600, Germany 575, Great Britain 520, Belgium 419, France 333, Sweden 333, Italy 84.

These changes in the relative position of the great producing nations were bound up with the change from iron to steel as the industry's major product with the introduction of the Bessemer steel making process. Prior to 1870 steel was not a tonnage factor in the industry. The metal of the early industrial revolution was iron, cast and wrought. Steel was a high grade special product, relatively expensive, used for cutlery and edge tools. Since early times steel had been made by the cementation process, a variety of what is now called case hardening whereby small bars of iron embedded in charcoal are heated for days until they are impregnated with carbon. The crucible process of later origin is closely related to the cementation process. Steel making was a small scale industry, less spectacular than iron making, although fine steel cutting tools have been essential in the technology of all times. Industry required a cheaper steel and this was first provided by the Bessemer process. The new steel was not as fine as the old, yet for most purposes better than cast or wrought iron. Although there is no



concise and satisfactory definition of steel, which always includes carbon but varies widely in its chemical composition, the term has come to be applied to all refined ferrous products aside from pig iron, cast iron, malleable cast iron and wrought iron.

The pneumatic method of making steel was discovered independently by an Englishman, Henry Bessemer, and an American, William Kelly, but Bessemer developed the process more fully and pioneered in making its commercial application possible. Bessemer's epoch making discoveries in England in 1855 and 1856 arose out of his quest for a material with the qualities of malleable iron to be used in the casting of cannon. By driving a blast of air through a bath of molten pig iron he oxidized the metalloids without the use of fuel and obtained a metal purer than ordinary cast iron; unfortunately, however, the phosphorus which remained in the resulting metal rendered it practically useless and the process could be used only with pig iron containing very small quantities of that element. The Bessemer process was consequently hampered by the limited supply of non-phosphoric ores both in Britain and elsewhere. It was therefore an event of major importance when Thomas and Gilchrist in 1879 successfully introduced an adaptation of the Bessemer converter which for the first time rendered phosphoric iron ores completely available for the manufacture of steel. A premium was actually put on the use of phosphoric ores for the slag was found to be a by-product highly prized as a

fertilizer. The Lorraine iron region with its phosphoric ores was now ready to come into its own, and the final technical obstacle to the uninhibited and phenomenal rise of the world iron and steel industry was removed.

Bessemer steel was destined to yield early precedence to the product of the regenerative open hearth furnace. In 1856 before the Bessemer converter was widely accepted William Siemens demonstrated that the use of gas to heat the furnace hearth produced high temperatures and fuel economy, the gas being developed by the burning of coal in auxiliary producers prior to its combustion in the furnace. This process slightly improved by the Martin brothers of France was in commercial operation by 1865. The advantages of the Siemens-Martin regenerative furnace over the Bessemer process are as follows: the use of ore as an oxidizing agent and the external application of heat render the temperature of the bath independent of the chemical reactions, which gradually eliminate the impurities in such a manner that the temperature and composition of the boiling metal are under more precise control; a larger diversity of products from a greater variety of raw materials may be produced; a greater output of finished steel is obtained from the same amount of pig iron, thus reducing the number of blast furnaces required in the industry; phosphorus can be eliminated from Bessemer ores even more satisfactorily than by the Thomas-Gilchrist process. In the United States this latter fact is of great importance since immense ore deposits are

TABLE III  
PRODUCTION OF STEEL BY PROCESSES IN LEADING COUNTRIES, 1870-1930  
(In thousands of long tons)

YEAR	WORLD TOTAL PRODUCTION	UNITED KINGDOM		UNITED STATES		GERMANY *	
		CONVERTER STEEL	OPEN HEARTH STEEL	CONVERTER STEEL	OPEN HEARTH STEEL	CONVERTER STEEL	OPEN HEARTH STEEL
1870	510	215	—	38	1		
1875	1,790	620	88	335	8		
1880	4,180	1,044	251	1,074	101	680	35
1885	6,190	1,304	584	1,519	133	913	272
1890	12,280	2,015	1,564	3,689	513	1,815	382
1895	16,650	1,535	1,725	4,909	1,137	2,791	1,171
1900	27,830	1,745	3,156	6,685	3,398	4,296	2,013
1905	44,220	1,974	3,838	10,941	8,971	6,524	3,201
1910	59,330	1,779	4,595	9,413	16,505	8,073	5,033
1915	65,570	1,301	7,050	8,287	23,679	6,588	5,583
1920	71,300	821	7,984	8,883	32,672	3,213	5,527
1925	88,930	476	6,713	6,724	38,034	6,190	6,902
1930	93,330	255	6,852	5,035	35,049	6,488	6,396

\* Includes the Saar throughout but excludes Lorraine and Luxemburg after 1915 and Upper Silesia after 1925.  
Source. *Statistics of the Iron and Steel Industries.*

rendered available which could not otherwise be utilized. The basic open hearth process has become the leading method in the United States and Great Britain; on the continent the Thomas converter is still used in refining most of the pig iron from the Lorraine deposits.

The statistics in Table III show not only the victory of open hearth over converter steel but also the enormous increase in the output of steel from 1870. The substitute for puddled iron resulted in an extremely rapid expansion of plant and of markets in the United States, England and other countries, as the new product offered a cheap, superior and plentiful supply of steel in a great variety of forms. The manufacture of wrought iron declined to the position of a minor branch of the industry. The Bessemer and open hearth processes laid the firm foundations of the modern steel age.

All finished iron and steel has once been pig iron, a semifinished material requiring further refinement before manufacture; hence the blast furnace is the common denominator of the iron and steel industries. There has been a revolution in scale and method of operation, in furnace design, in auxiliary equipment and in the economical use of raw materials, but the essential principles of the blast furnace have remained unchanged since the early furnaces. As the data in Table IV show, the productivity of blast furnaces has increased steadily and spectacularly, particularly in the United States. From 1740 to 1860 British furnaces were improved in efficiency by more than 200 percent and led all other nations in output. But British output was exceeded by American production in 1885 and by German production in 1890; since then Britain has fallen far behind the other leading producers in output per blast furnace. Improved smelting efficiency has lowered costs, consumption of coke and flux per ton have been reduced remarkably, and actual yields are more closely approaching theoretical yields even though the iron content of the available ores drops somewhat each year. Today the modern steelworks stack will make from 600 to 1000 tons in a single day with the same operating crew required by small furnaces, with a resulting large increase in the productivity of labor. According to estimates made by the writer average blast furnace crews in the United States have fluctuated within narrow limits since the 1880's, ranging from 116 men per furnace in 1884 to a high point of 185 men per furnace in 1908 and dropping again in recent years to a low

TABLE IV  
AVERAGE ANNUAL OUTPUT PER BLAST FURNACE IN  
PRINCIPAL PRODUCING COUNTRIES, 1740-1930  
(In thousands of gross tons)

YEAR	UNITED STATES	GREAT BRITAIN	GERMANY AND LUXEMBURG*	FRANCE	SWEDEN
1740		204			
1788		804			
1806		1,515			
1840		3,473			
1860		6,683			
1865				2,869	
1870				4,359	
1875		10,120	7,159	5,128	
1880		13,667	10,919	8,448	
1885	21,439	17,086	15,848	12,158	
1890	31,067	19,092	20,653	16,229	
1895	52,392	22,394	25,369	19,921	
1900	58,282	22,232	30,606	21,544	
1905	85,432	27,850	38,640	26,104	4,116
1910	102,208	29,835	48,053	33,970	5,307
1915	128,534	30,351	44,291	14,413	6,239
1920	126,872	28,241	43,763	37,138	4,825
1925	167,606	41,381	87,535	56,487	5,669
1930	211,727	49,407	115,152	72,095	7,939

\* Excluding the Saar and Upper Silesia after 1915

Source: Computed from *Statistics of the Iron and Steel Industries*.

point of 121 men per furnace in 1929. Along with increased furnace output have come improvements in handling materials, until at present the electrically controlled stoking operations of modern furnaces are practically manless.

There have been equally great gains in productivity in the steelworks and rolling mills. The most far reaching change has been the rise of the continuous process whereby the steel furnaces receive hot metal directly from the blast furnaces, and the time formerly required for reheating is eliminated. As shown in Table V, 82 tons of finished steel per man were pro-

TABLE V  
AVERAGE ANNUAL OUTPUT PER WAGE EARNER, IRON  
AND STEEL INDUSTRY, UNITED STATES,  
1879-1929

YEAR	BLAST FURNACES		STEEL WORKS AND ROLLING MILLS		COMPOSITE INDEX
	GROSS TONS	INDEX	GROSS TONS	INDEX	
1879			31	57	
1880	240	100	54	100	100
1899	370	154	82	153	153
1909	671	280	111	207	217
1919	716	298	97	180	192
1929	1707	711	138	257	284

Source: Computed by author on the basis of census and trade publication statistics.

duced in 1899, about three times the productivity of 1880. By 1910 the output per man had risen to 111 tons and to a still higher level in 1915 and 1916, when American steel plants began heavy shipments to war ridden Europe. Productivity has since continued its upward march, reaching approximately 138 tons per man in 1929, probably five times the efficiency of fifty years ago. Hand charging of the open hearth furnace has disappeared; labor saving equipment in all modern operations is now substantially uniform from plant to plant. The tendency of the large producers is toward the construction of open hearths with a tonnage capacity ranging from 150 to 200 tons per heat. The modal furnace for the industry has a capacity of from 75 to 90 tons, with the same operating crews required regardless of the size of the furnace. Higher indirect costs for the larger furnaces are counterbalanced by lower tonnage costs. The progress over this entire period has been due to increasingly effective combustion control; the construction of ever larger furnaces; the combination and elimination of occupations, especially after the partial introduction of the 8-hour day in 1923; and the universal adoption of the standard labor saving devices, most of which were known as early as 1911.

Among the most important improvements yielding higher productivity are straight line production and automatic control, which have reached their highest development in the rolling of steel. After Cort's original application of steam power to the rolling mill manual labor was still indispensable in the handling of the metal as it passed to and fro in the rolls. The modern specialty mills making highly standardized shapes or products are usually continuous automatic mills with series rolls arranged in tandem, automatically handling the glowing metal as it is transformed from ingot to finished shape without reheating. The scale of operation required by this continuous process is typical of all modern plants in the industry. Reduction of costs in rolling mills has been made possible by the increasing standardization of shapes and chemical requirements. Steel rails are highly standardized, for example, while there is little uniformity in the steel requirements of the automobile companies. In the rolling mills arduous manual labor has been reduced to a minimum in recent years as a result of electrification and standardization. The electrification of main roll drives and incidental controls has facilitated smooth operation and has saved maintenance

and indirect labor. In 1905 there were only 5 electric main roll drives in the iron and steel industry in the United States, while in 1931 there were 1806 such installations, with an aggregate capacity of 3,000,000 horse power out of the industry's total rated horse power of not much more than twice this figure. These developments are factors in the increased output of finished steel per worker.

The spectacular increase in blast furnace output would have been impossible without the employment of the fibrous coke, which supports the burden of larger and taller furnaces without impeding the blast. Despite its economic advantages coke at first was slow in supplanting the use of anthracite in the American industry. It was not until 1875 that the total output of coke burning furnaces exceeded that of anthracite stacks, but since that time the growth of production and the increasing efficiency of smelting have been due in large part to the exclusive use of better and better metallurgical coke. Coke has been an important factor in the integration of the steel industry; the Carnegie company became dominant in the industry only after it acquired the Frick coking interests in 1882. The making of metallurgical coke is now the most important auxiliary of the steel industry. Historically iron ore is almost always brought to coal rather than coal to the ore. The continuance of this tradition is explained not solely by the importance of coke in the blast furnace but by the large quantities of coal and of coke oven gas required to supplement blast furnace gas in providing power for the integrated steel plant, which owns and controls its own coal mines and coking ovens. The production of coke has been improved by the slow but steady adoption of the distillation process. In the old beehive process all of the constituents of coal aside from the coke itself were wasted, while distillation now yields such valuable by-products as the benzols, toluol, naphthalene, tar and ammonia. From 1913 to 1931 the total American coke production (including domestic coke) increased from 12,700,000 tons to more than 32,000,000 tons, 70 to 80 percent of which was manufactured by distillation in by-product plants operated in connection with steel-works or merchant blast furnaces. To supply a modern furnace plant with coke a sufficient supply of gas is produced, in combination with blast furnace gas itself, to operate all of the heavy machinery of the mills with a surplus left over for the market. In addition to its financial

advantages the integrated operation of coke plants guarantees a steady supply of uniform coke for the smelters. Practically the entire output of coke is now produced by steelworks or public utilities engaged in the manufacture and sale of artificial gas. This type of integration is now universal in steel plant operation in all countries.

With the growth of the steel industry the isolated merchant blast furnace of small capacity has permanently declined in the United States. This decline has been due to the steadily falling price of pig iron, to the high comparative costs of small scale operation and to the ruinous competition from steelworks furnaces which in slack times dump surplus iron on the market. What remains of the merchant iron industry is chiefly dependent upon the foundry trade. Except as casting is required for the internal operations of the basic industry, the foundry is a distinct industrial entity with two main branches, the gray and malleable iron foundries and the steel foundries, and with two distinct types of business concerns, the jobbing foundries and those operated in conjunction with machining and fabricating enterprises. The jobbing foundries are physically dissociated from other processes; the trade is loose and decentralized, composed principally of small scale units producing and selling a wide variety of products for local use. The growing importance of steel melting units, usually larger than the iron foundries, reflects the inroads of steel into the domain of the gray iron casting.

Perhaps the most far reaching recent change in steel manufacturing was the introduction in 1927 of a remarkable process of continuous strip sheet rolling. Largely because of the expansion of the automotive industry the production of steel plates and sheets (including tin plate) increased until by 1930 it absorbed 30 percent of the total steel output. Since the early days in Wales the bulk of the product has been produced on simple hand rolls; to roll sheets by a continuous process without reheating was considered an impossibility. In the United States in 1929 there were roughly 1400 of the old mills in the sheet and tin plate industry, with an aggregate annual capacity of 7,500,000 gross tons of sheets. One of the new continuous strip sheet mills has a yearly capacity of approximately 400,000 gross tons of uniform gauge, equivalent to the capacity of forty or fifty old style sheet or tin mills. According to present indications the "hot mills" may

become as obsolete as the bloomery and the forge. More than 10,000 workers may be displaced when both direct and indirect labor items are taken into account, and sheet production will be concentrated in the hands of a few concerns. Hitherto the steel sheet trade with its growing market has attracted a large number of small independent concerns into a highly competitive industry not physically integrated with the central processes and requiring comparatively little capital. A series of recent mergers again demonstrates the dual role of technology and unfavorable market conditions in stimulating concentration. By 1931 the continuous strip sheet process was adopted by 9 American producers, including the United States Steel Corporation, and by a number of foreign producers.

Increased productivity in the basic iron and steel making processes and in the production of coke has been paralleled by similar progress in the mining of iron ores. Ore mining is an auxiliary of the iron and steel industry; in 1922, according to the Federal Trade Commission, two American steel companies owned or controlled over one half of the available reserves of iron ore. Average daily output per man in ore mining has increased steadily, rising from  $3\frac{1}{2}$  tons in 1911 to 9 tons in 1929. Since the percentage of production from open pit mines has not materially changed, the explanation of improved efficiency must be sought in the operations of underground mines where mechanical slusher hoists have been extensively introduced, increasing shift production per man from 8 or 9 tons by the hand process to 15 or 18 tons with the new equipment.

In recent years there have been no marked technical advances in the American steel industry, which in comparison with many other industries is relatively backward in scientific research, devoting its attention primarily to the pursuit and consolidation of profits on the basis of past discoveries and inventions. Two interesting developments, however, have taken place in the manufacture of wrought iron and in the small scale production of sponge iron. Wrought iron has been displaced by the stronger Bessemer and open hearth steels, but the earlier product retains valuable physical properties because of its ropelike structure and its resistance to corrosion. The mechanical difficulties encountered in making wrought iron at low costs have been found in the puddling and not in the rolling processes, but now the Ashton mechanical puddling process has successfully produced in a

fraction of an hour an amount of wrought iron which from the time of Henry Cort had required a day's labor. Wrought iron still enjoys advantages in the manufacture of pipe, certain railroad accessories and other specialties, but it is not likely to become a serious competitor of tonnage steel. Recent experiments with direct methods of steel making have demonstrated that sponge iron can now be made directly from the ore without the introduction of impurities from the coke and flux of the blast furnace. This direct conversion is only practicable on a small scale at present, and its manufacture is too expensive for tonnage production; the new process can, however, readily provide iron for small concerns in outlying districts, where a large blast furnace would be impracticable, and it is effective in smelting ores not readily usable in the blast furnace.

More important is the recent growth of alloy steels in response to the increasingly exacting requirements of the steel trade. Alloys are useful especially in the manufacture of automobiles, airplanes, electrical machinery and other products which need steel of particularly fine quality. From 1925 to 1930 the alloy steels composed from 5 to 7 percent of the total American production of steel. The increasing production of fine steel is a counterinfluence against the development of extremely large furnaces and places a premium on the employment of highly skilled workers to supervise the necessarily careful operations in alloy production. Alloy steels are refined in the open hearth furnace or in the smaller electric furnace which replaces the costly crucible process for making finer steels and permits more precise control of temperatures and chemical reactions. In recent years the "electric" steels have provided between 1 and 2 percent of the total American production, but the figure obscures their real importance in the fine steel industry. One of the alloy products of the electric furnace is stainless steel, a combination of iron (customarily 74 percent), chromium and nickel. This alloy steel is practically impervious to rust, heat and acid and since 1927 has been improved and has assumed increasing importance. In 1931 the United States Steel Corporation purchased the rights to an improved method of manufacturing stainless steel perfected by the Friedrich Krupp A. G. of Germany, becoming the fourth American company to engage in the production of stainless steel. The price of the product is still very high, but increasing demand and vol-

ume production are expected to lower it materially. Alloys are not only providing a finer material for old products but are also opening up new uses for steel.

One of the important long time technical changes in the industry is the increased use of steel and iron scrap in steel making, as a result of which the annual output of steel now regularly exceeds the output of pig iron in all steel producing countries. In the United States in 1896 approximately 750,000 tons of scrap were remelted in making steel, in 1900 about 2,000,000 tons were used in this manner, and in 1929 the consumption of scrap reached the enormous total of 25,000,000 tons, about 45 percent of the total production of steel. If there were to be a scrap famine today, twice as many blast furnaces would be required to support the steel industry. The sources of the scrap metal are varied. It is estimated, for example, that the number of automobiles commercially scrapped has increased from about 794,000 in 1922 to 2,450,000 in 1928. The use of scrap supports a steel industry in areas where smelting is uneconomical and where freight rates for pig iron are prohibitive. It is not limited to the iron and steel industry itself; thus the Ford Motor Company provides much of its steel and foundry iron requirements by salvaging its own used cars on a large scale.

Technological and other changes in the iron and steel industry have been accompanied by increasing integration of operations and concentration of corporate control in all the producing countries. Concentration in iron and steel has advanced further and proceeded more rapidly than in any other manufacturing industry. The production of iron and steel has always required relatively large amounts of fixed capital; these were enormously increased by the technological transformation wrought by the industrial revolution and the subsequent integration of operations, which laid the physical basis for amalgamation and large scale combination. All developments since have emphasized the need of large fixed capital. In the United States the capital investment per wage earner in blast furnaces rose from \$6 in 1849 to \$150 in 1919, and in rolling mills and steelworks from \$30 to \$170. Since 1919 the investment has again greatly increased. The concentration arising from large investment of fixed capital and integration of operations has been supplemented by vertical and horizontal combination—by the ownership or control of sources of raw materials and of

transportation and by the diversification of output, including the manufacture of products not strictly within the domain of the heavy iron and steel industry. The concentration within the industry represents in an acute form the tendencies inherent in large scale production.

Adoption of the Bessemer process and the use of coke in smelting in the United States was accompanied by integration and concentration. In 1882 the Carnegie Steel Company acquired control of the H. C. Frick Coke Company, which dominated the Connellsville district of Pennsylvania; in 1897 it secured control of large Lake Superior ore reserves; by 1900 the company was entirely independent in its supply of raw materials and transportation facilities and manufactured a wide variety of products, including steel for naval vessels. The Carnegie profits were large—\$133,000,000 from 1875 to 1900, \$40,000,000 in 1900 alone, exclusive of reinvested profits. Stimulated by the sharp decline of prices and profits due to cut-throat competition and the depression of 1893-96, the industry put through a series of mergers which gave rise to a relatively small number of large companies. These companies fell into two definite classes, those which made pig iron, steel billets and other heavy products, and those which manufactured more highly finished materials. This movement toward consolidation had as its main objectives the restriction of competition, the physical integration of primary manufacturing processes (involving only the more standardized products), the control of raw materials and transportation and the flotation of securities in the expectation of large future profits. The chief of these objectives was the desire to limit competition, although the flotation of securities was most important to the promoters—at least \$150,000,000 in profits was realized by promoters in the series of mergers which culminated in the United States Steel Corporation. Despite mergers and concentration competition was still rampant by 1900 and threatened to flare up more disastrously. Companies manufacturing finished steel prepared to make their own crude steel, and the Carnegie Steel Company retaliated with plans to manufacture finished steel, build a competing railroad and wage ruthless competitive war. To forestall this threatened overexpansion and ruinous competition the Morgan interests organized the United States Steel Corporation in April, 1901. This great combination united most of the leading heavy producers with the principal concerns manufacturing finished steel

in the United States and comprised some twelve combinations (including the Carnegie Steel Company), which in their turn had been formed out of 200 or more independent enterprises. The corporation was heavily watered; a capitalization of \$1,384,000,000 was imposed on tangible property worth only \$676,000,000 according to the United States Bureau of Corporations. The water was subsequently squeezed out by the reinvestment of profits. At its inception the United States Steel Corporation controlled 45 percent of the blast furnace output, 65 percent of the crude steel and 51 percent of the finished steel production of the United States. With the exception of the purchase of the Tennessee Coal and Iron Company in 1907 the corporation has refrained from any major acquisition. This expansion and the corporation's restrictive influence in the industry led the federal government in 1911 to institute an action to dissolve it under the antitrust laws; in 1920 the United States Supreme Court decided the case against the government. The growth of the United States Steel Corporation has lagged behind the progress of the industry—its capacity declined from 65 percent of the total in 1901 to 40 percent in 1929. Other concerns, however, have integrated and combined. Between 1919 and 1929 no fewer than 270 mergers achieved consolidations among 690 individual concerns engaged in the manufacture of iron and steel and its products, while more than 1000 concerns totally disappeared. This expansion through mergers (and to a smaller degree extension of plant) has aimed at diversification of products, access to new markets and control of production and sales. In 1930 six great combinations controlled 75 percent of the industry's output in the United States.

Because of concentration and the reluctance of the United States Steel Corporation to affiliate with national groups, the American steel industry has not been fertile ground for the development of trade associations (which, however, flourish in the manufacture of metal products). The American Iron Association organized in 1855 was subsequently succeeded by the American Iron and Steel Association, which in 1911 became the American Iron and Steel Institute. The institute has been used to promote the stabilization of competitive practices and has provided a channel for discussion of business and technical problems and the compilation of trade statistics. A strong trade organization, the National Association of Flat Rolled Steel Manu-

facturers, has been organized among the independent sheet producers; and the Institute of Scrap Iron and Steel unites the ferrous scrap industry.

Under the influence of the United States Steel Corporation and because of increasing concentration among independents American steel production has been in a state of "monopolistic competition" in which prices and output are substantially controlled by a few cooperating producers. Beginning in 1907 there was an active effort to enforce a uniform price system by means of the informal Gary dinners, which were finally abandoned in 1911 as a result of widespread criticism. However, price stabilization was effectively supported by other means, particularly by the Pittsburgh-plus practise maintained under protection of the United States Steel Corporation—a practise whereby consumers were required to pay Pittsburgh base prices for steel plus the equivalent of the freight rates from Pittsburgh, regardless of the point of actual manufacture of the purchased steel and without reference to the costs of production in the various districts. After 1910 consumers of steel particularly in the middle west became restive under Pittsburgh-plus and in 1924 a group of associated western states secured a ruling from the Federal Trade Commission condemning the system "as an unfair method of competition" in violation of the federal laws prohibiting price discriminations. The subsequent breakdown of Pittsburgh-plus has given rise to a new multiple basing point system, but the leadership of Pittsburgh in the industry has been definitely impaired and an artificial barrier removed from the further development of the Chicago and Great Lakes districts as the natural economic centers of most efficient production and distribution.

In view of the huge fixed capital requirements of iron and steel manufacture the financing of the industry is more akin to that of railroads and public utilities than to that of the usual manufacturing enterprise. An analysis of financial ratios in various American industries has shown that steel ranked at the bottom of a list of eleven industries in the rate of turnover of fixed capital during the years 1914-21, showing a ratio of .7 as compared with approximately 3 for automobiles and 10 for slaughtering and meat packing. The larger companies ordinarily enjoy lower costs of production than the smaller concerns, but investigations have revealed that the larger enterprises generally

yield a smaller return on investment than is earned by the less thoroughly integrated firms in prosperous times. According to the Federal Trade Commission fourteen completely integrated steel companies had an average rate of return of 21.9 percent from 1915 to 1918, while the less integrated companies earned progressively higher rates, 42 rolling and finishing mills yielding an average rate of 36.8 percent on invested capital. Since most of the steel capacity is concentrated in the hands of the integrated companies, the industry is eager to stabilize prices and thus attain a secure and steady margin of profit above fixed and operating charges. Although a relatively high degree of price stability has been characteristic of the American steel market in recent years, there is no evidence that the achievement has increased the stability of production or employment.

Although the British iron industry was one of relatively high integration and concentration during and after the industrial revolution, it lagged behind the onward sweep of concentration after the introduction of the Bessemer and open hearth processes. This was due to the conservatism and independence characteristic of old family concerns with strongly developed pride of ownership and to the general relative decline of British industry after 1890. These influences inhibited the combination movement and hampered the efficiency of the industry, yet both vertical and horizontal combinations have been more extensively developed in iron and steel than in other British industries. In 1919, 30 companies controlled 80 percent of the iron and steel output. During and since the World War there has been a rapid extension of large plants in Britain and, although the physical make up of the industry continues to reflect the conservatism of earlier days, integration and concentration have considerably increased. Vickers, Ltd., have greatly enlarged the scope of their operations by means of mergers and new plant. In 1929 Bolckow, Vaughan and Company, Ltd., merged with Gorman, Long and Company, Ltd., and the new concern acquired control of four other companies; in addition it owns one half the share capital of five other companies, two of which are in South Africa. The Bolckow-Vaughan company has an annual capacity of 2,500,000 tons of steel ingots and 4,000,000 tons of coal. Most of the iron and steel companies own their own coal and iron mines; in 1925 it was estimated that they owned one fifth of the coal mines in Great Britain. Diversification of

output is increasing along with concentration and rationalization. The industry is still strongly competitive, however. British steel manufacturers are now closely banded together in the strong National Association of Iron and Steel Manufacturers organized in 1918 at the suggestion of the government; in 1932 it extended its membership to include representatives of the iron and steel industries of the empire.

The iron and steel industry in France is much less competitive than in Great Britain; integration and concentration are more highly developed, but they lag considerably behind the United States. Where there had been more than 1000 French metal works in 1864, integration and combination reduced the number to 208 in 1912. Competition was never really very active because of the work of the *comptoirs*, a form of cartel or unified selling agency, although these never had the extensive control of the American trusts or German cartels. The strong Comité des Forges, founded in 1864, has the legal status of an employers' association with no right to transact business, yet it has been the most active central influence in the industry, fostering the pre-war iron and steel cartels and exercising unified administrative authority over the entire metallurgical industry during the World War. *Comptoirs* began to appear at an early date in France. There was one for pig iron as early as 1876; in 1904 a *comptoir* for the export of metal products and in 1905 one for the export of pig iron were set up. During the war the *comptoirs* disappeared and efforts to revive some of them have been unsuccessful. But in their place integration has made considerable progress, especially vertical organization including all stages of production and distribution. These organizations tend to expand and absorb an increasing proportion of the blast furnace output. Horizontal combinations have not been important except in Lorraine, where five groups of associated companies acquired control of the former German iron and steel concern. This is an outstanding example of concentration, since the Lorraine enterprises now constitute the basis of the French industry. The major French producers have a diversified output, including the production of munitions.

Integration of operations and concentration of corporate control are more highly developed in Germany than in any other European country, almost as highly developed as in the United States. This was true also before the World War, although partly obscured by the prevalence of

cartels. The Krupps early adopted a policy of integration and diversification, which has been maintained; they acquired ownership or control of coal and iron mines as well as transportation facilities (including a fleet of ships to carry ores from Spain), combining all stages in the manufacture of a variety of products—many of them more within the scope of the metal or engineering industries—and in 1896 went into shipbuilding. During the post-war inflation period Hugo Stinnes formed a huge iron and steel combine, which disintegrated after his death and the restoration of a normal currency. Rationalization stimulated the movement of integration and concentration, which culminated in 1926 in the formation of the United Steel Works (Vereinigte Stahlwerke A. G.), a consolidation of the Rhein-Elbe Union, formerly in the Stinnes combine; the Thyssen and Phoenix groups; and the Rheinische Stahlwerke A. G. The new combination had 40 percent of the German industry's capacity and it was increased in 1932 by absorption of the principal iron and steel works of central Germany; in 1929 the United Steel Works had assets of 2,145,000,000 marks and owned a large block of stock in one of the most important manufactories of machinery. Within recent years six giant concerns have dominated the industry, their combined quotas in the cartels ranging from 55 percent in pig iron to 91 percent in plate. Cartels, partly a substitute for and partly a supplement to integration and concentration, flourished in Germany as early as the 1860's. Before the World War there were two main cartels—the pig iron cartel (Roheisenverband) and the steel cartel (Stahlwerksverband), the latter uniting 10 subsidiary cartels of manufacturers of semifinished products. All cartels except the pig iron were dissolved during the post-war inflation period, but many including the steel cartel have been subsequently revived. Since 1924 the raw steel syndicate (Rohstahlgemeinschaft) uniting companies, including Krupp, which could not or would not join the steel cartel, has imposed production quotas upon its members, although it does not allocate orders and sales or fix prices. There are a number of other cartels in the industry.

An extremely high degree of integration and concentration has characterized the iron and steel industry of Russia since the acceleration of the industrial evolution of that country after 1870. Before the World War there were several huge steel plants, such as the Pugachev Works in the Donets basin, each of which employed



over 10,000 workers. Soviet Russia, particularly since the adoption of the first Five-Year Plan, has concentrated on the building of an iron and steel industry as the indispensable basis of industrialization and consequently of the realization of socialism. The number of active blast furnaces increased from 45 in 1925 to 77 in 1929 and 92 in 1931; a total of 26 new blast furnaces, 65 open hearth furnaces, 7 electric furnaces and 27 rolling mills will be put in operation in 1932. A high degree of integration prevails in the iron and steel industry built up in the Soviet Union. The Ural-Kuznets combination of plants is to produce 6,500,000 tons of pig iron in 1933; 4,000,000 tons of Kuznets coal is to be transported 1400 miles by rail for the use of the Magnitogorsk steel plant, which rivals in size the American works at Gary, and on the return trip the cars will carry ores from Magneto Mountain to the secondary metallurgical base at Kuznets. The union's planned output of iron and steel in 1932 was placed at 9,500,000 tons, double the pre-war production. In Soviet Russia of course the iron and steel industry operates like the other industries under government direction and control. No other government participates directly in the industry except the German government, which in 1932 purchased a large block of stock in the United Steel Works.

In the capitalist countries the growth of integration and concentration has resulted in increasing control of the iron and steel industry by financial capitalists and the great banks. Steel stocks are ordinarily widely held; the multiplication of stockholders separates ownership and management; and control can be exercised by concentration of blocks of minority holdings in the hands of financial capitalists or banks or a combination of both. This control is unified and strengthened by means of interlocking directorates. Thus the United States Steel Corporation since its inception has been under the control of J. P. Morgan and Company, and most of the other large companies are in a similar position. In view of the industry's great capital requirements strong banking connections are indispensable. The general situation is the same in France and Germany. For example, the important French bank, Banque de l'Union Parisienne (which is closely allied with Schneider et Cie), has holdings in the important Longwy iron and steel companies and several other companies and finances the dominant group of Lorraine iron and steel producers.

In Germany the large D banks are represented on the boards of directors of all the important iron and steel companies; the Deutsche Bank was active in the formation of the United Steel Works and two minor combinations, while the Disconto-Gesellschaft, the most important iron and steel bank (now merged with the Deutsche Bank), has engaged aggressively in the trustification of the industry. In this fusion of large scale industry and finance the iron and steel industry is once more typical of the modern development of capitalist enterprise. Here again, however, Great Britain lags behind, although recent mergers and consolidations are producing conditions of financial control similar to that in other major producing countries.

Although Japan is developing its own heavy industry (stimulated by the World War but hampered by lack of raw materials) and there is one giant integrated plant in India, iron and steel constitute an essentially European and American industry. In the principal producing countries the industry has expanded greatly since the war, particularly in capacity, but only in the United States has there been any

TABLE VI  
PER CAPITA CONSUMPTION OF IRON AND STEEL,  
1913-25  
(In pounds)

	1913	1923	1924 <sup>†</sup>	1925
United States	600	1032	853	1032
Germany	575	276	384	434
Great Britain	520*	456†	494†	441†
Belgium	419	401**	566**	462**
France	333	375†	503†	448†
Sweden	333	176	293	262
Italy	84	75	88	134

\* Including Ireland

† Excluding Irish Free State

\*\* Including the Duchy of Luxemburg.

† Including the Saar

Source: Adapted from Osburn, W. F., and Jaffe, W., *The Economic Development of Post-war France*, p. 314.

considerable increase in per capita consumption (see Table VI), explained primarily by the unusual expansion in the American output of automobiles, machinery and metal products and in building activity. Italy's increase in 1925 was fortuitous; its post-war consumption was only slightly higher than pre-war. Great Britain's consumption was approximately stationary, while Germany's declined considerably. French consumption increased mainly because of reparations and acquisition of the Lorraine iron and steel industry, which temporarily stimulated industrialization. These developments express the

relative economic decline and crisis in Europe. The consumption of iron and steel rose only slightly among the non-producing countries. In 1929 the combined exports of Great Britain, the United States, Germany and France were 16,563,000 tons, a slight increase as compared with 14,698,000 in 1913; but the average for 1920-28 was slightly below the 1913 level.

The world's uneven rate of iron consumption and distribution of iron ores may result in important geographical shifts of the iron and steel industry in the immediate future. Knowledge regarding the amount and distribution of the world's ore resources (Table VII) is es-

sential to an understanding of the industry's growth, its geographical concentration and the producers' international competitive position. Estimates at any time are necessarily faulty, for information concerning available ores obviously depends upon the progress of the industry. According to estimates of the Eleventh International Geological Congress in 1910 the 30,-000,000,000 or 35,000,000,000 tons of the world's actual and possible supplies of iron ore would last more than 1000 years at the rate of production of 1913. More recent surveys indicate that the 55,000,000,000 or 60,000,000,000 tons of known reserves will probably hold out for 333

TABLE VII  
ESTIMATED IRON ORE RESERVES OF THE WORLD

	IRON ORE RESERVES				APPROXIMATE IRON CONTENT (PERCENTAGE)
	ACTUAL	POSSIBLE	TOTAL	PERCENTAGE DISTRIBUTION	
	(In millions of tons)				
World Total	57,812	167,663	225,475	100.0	—
Europe	22,599	16,818	39,417	17.5	—
France	8,164	4,090	12,254	5.4	40
United Kingdom	5,970	6,199	12,169	5.4	30-35
Germany	1,317	2,843	4,160	1.8	40
Sweden	2,203	674	2,877	1.3	60-70
U. S. S. R.	2,057	617	2,674	1.2	45-55
Norway	384	1,347	1,730	0.7	25-35
Spain	1,115	273	1,388	0.6	50-60
Czechoslovakia	336	201	537	0.3	35
Poland	186	212	398	0.2	25-30
Austria	242	150	392	0.2	40
Luxemburg	270	—	270	0.1	26-40
Belgium	70	66	136	0.1	35
Italy	18	—	18	—	55-65
North and Central America	18,666	119,947	138,613	61.5	—
United States	10,452	83,872	94,324	41.8	50-60
Canada and Newfoundland	4,244	24,000	28,244	12.5	35-57
Central America and West Indies	3,680	12,075	15,755	7.0	35-45
South America	8,200	—	8,200	3.6	—
Brazil	7,000	—	7,000	3.1	60-70
Chile	441	—	441	0.2	60-70
Asia	4,401	20,855	25,248	11.2	—
India	3,326	20,500	23,826	10.6	55-70
China	944	355	1,299	0.6	50
Japan	85	—	85	—	50
Siberia	33	—	33	—	50
Africa	1,344	10,000	11,344	5.0	—
Rhodesia	—	6,000	6,000	2.7	25
Union of South Africa	1,095	2,000	3,095	1.4	45-60
British West Africa	3	2,000	2,003	0.9	50
Algeria	100	—	100	—	—
Tunis	88	—	88	—	—
Australia	920	42	962	0.4	45-65
East Indies	817	—	817	0.4	50
Philippine Islands	806	—	806	0.4	45-50
New Zealand	70	—	70	—	45-60

Source: Adapted from Kuhn, Olin R., "World's Iron-ore Resources," *Engineering and Mining Journal*, vol. cxxii (1926) 84-93.

years, and the total reserves of three times that amount should last for 1300 years if the world rate of production from 1926 to 1930 is maintained. New explorations hold promise of future increases in estimated reserves, but it must be remembered that geological availability is very different from commercial availability. According to present estimates the United States is richest in iron ores, with 41.8 percent of the world's total. The steel empire of the northern American states now rests solidly upon the unparalleled economy of the Lake Superior region, where the soft Mesabi ores of practically all grades are scooped by steam shovels directly into railroad cars, from which they are loaded by gravity into the ore boats of the Great Lakes. The reserves of this region are known to contain about 2,650,000,000 tons, most of which averages 55 to 60 percent iron; Kuhn estimates that the total possible reserves aggregate about 72,000,000,000 tons. Approximately one half of the Mesabi reserves are holdings of the United States Steel Corporation. Since 1910 Mesabi ores have provided more than half of the annual American output of 40,000,000 to 70,000,000 tons. In close proximity to coal and flux, the available Alabama ores are leaner but the known supplies are more extensive at present than the Lake Superior ores. The southern states contain known reserves of about 4,000,000,000 and possible reserves of about 10,710,000,000 tons. It is predicted by competent authorities that the high grade ores of the Mesabi region may be exhausted in about 30 years at the present rate of production and that the United States will begin to use large supplies of imported iron ores between 1945 and 1950. The American industry has already imported a small amount of ore—3,139,000 tons in 1929—the chief importer being the Bethlehem Steel Corporation, which because of its late entrance into the producing field was forced to go to Chile for the bulk of its iron reserves.

The large reserves widely distributed in Great Britain are ordinarily so lean that they require beneficiation before smelting; and for many years Britain has imported iron ores from various parts of the world, a fact which accounts in part for the backward state of its iron and steel industry. Germany's reserves were greatly reduced by the loss of the Lorraine ore fields in the World War, from which it must now import ores, while the French position has been correspondingly improved, with France now enjoying virtual monopoly of the iron mining industry

of western Europe. The Lorraine field, which yields from 30,000,000 to 40,000,000 tons annually, is the largest iron ore district in Europe and is estimated to contain over 6,000,000,000 tons of ore with an iron content of 25 to 48 percent. As in the Mesabi Range most of the Lorraine ore is mined by steam shovels directly from open pits. Large Spanish reserves exploited for more than two thousand years furnish valuable Bessemer ores for export to the iron and steel industries of other countries. In Soviet Russia the iron reserves are still largely unexplored and consequently seriously underestimated, as recent discoveries indicate; they include important deposits of rich ores at Krivoy Rog and Kerch in southern Russia and other ores in central Russia, the Caucasus and the Ural Mountains, with probable undiscovered reserves in Siberia. Contradictory to previous opinion in many quarters a recent survey in China indicates that the relatively small reserves of less than 1,000,000,000 tons of iron ore in that country cannot be regarded as a storehouse of future supplies.

While only Great Britain and Germany import ores to any considerable extent, all iron and steel producing countries must import a variety of commodities necessary in the fabrication of steel. The United States imports 40 of these commodities (one of the most important being manganese) from 57 different countries. The other producers are in a comparable situation. Most of the imported commodities come from colonial and other economically backward countries and constitute an important consideration in the politics of the imperialist powers.

Changes in the available reserves of iron ore as well as in the tempo of general industrialization have affected the relative distribution of the world's output of iron and steel between the leading producing countries. As indicated in Table VIII the expansion of the American share from less than 20 percent before 1880 to nearly 50 percent in the period 1921-30 contrasts sharply with the declining share of Great Britain, which in 1926-30 produced only 7 percent of the world's output compared with 50 percent before 1870. The solid position of central Europe (Germany, France, Belgium, Luxemburg and the Saar) is evident in the consistent progress of this region despite the bitter industrial and national rivalries which have hampered normal industrial operations. Central Europe on the whole has maintained its relative position; Great Britain's relative loss has been absorbed by the

# Iron and Steel Industry

313

TABLE VIII

RELATIVE SHARE OF LEADING PRODUCING COUNTRIES IN WORLD'S OUTPUT OF IRON AND STEEL, 1871-1930

PERIOD	PERCENTAGE OF WORLD PRODUCTION OF							
	PIG IRON				STEEL			
	UNITED STATES	UNITED KINGDOM	CENTRAL EUROPE *	ALL OTHER COUNTRIES	UNITED STATES	UNITED KINGDOM	CENTRAL EUROPE *	ALL OTHER COUNTRIES
1871-75	16.3	47.0	27.6	9.1	14.5	42.9	34.4	8.2
1876-80	17.4	45.1	28.5	9.0	27.7	34.0	29.8	8.5
1881-85	20.3	40.0	29.2	10.5	28.1	32.5	29.3	10.1
1886-90	21.6	32.9	28.0	17.5	32.8	31.3	25.8	10.1
1891-95	31.4	28.0	29.8	10.8	34.2	22.6	31.6	11.6
1896-1900	32.4	25.1	30.5	12.0	35.5	19.3	31.7	13.5
1901-05	40.2	19.3	28.9	11.6	42.7	14.3	30.4	12.6
1906-10	41.5	16.9	30.5	11.1	43.3	11.9	31.5	13.3
1911-15	41.4	13.9	31.2	13.5	42.7	11.3	31.2	14.8
1916-20	57.4	13.3	20.1	9.2	57.6	12.5	21.4	8.5
1921-25	50.1	9.4	30.8	9.7	51.9	9.5	27.6	11.0
1926-30	44.3	7.1	34.1	14.5	47.2	7.5	30.3	15.0

\* Germany, Saar, Luxembourg, France, Belgium

Source: Computed from *Statistics of the Iron and Steel Industries*

United States. Within central Europe, however, important national changes have taken place with the reconquest by France of Alsace-Lorraine. Germany is no longer dominant in European iron and steel production, while the French industry greatly exceeds its pre-war proportions.

The international competitive situation in the iron and steel industry is influenced not only by ore reserves and the output of the industry but also by the problem of excess capacity as determined by available home and foreign markets. Since the World War this problem has become acute in all the producing countries (except the Soviet Union), the result of new plant, higher productivity and the restriction of markets. American capacity has increased more than domestic demand; in the case of the United States Steel Corporation capacity rose from 22,700,000 tons in 1920 to 26,075,000 tons in 1930. It has been estimated that despite the great increase in consumption the American industry must rely upon foreign markets to absorb more than 25 percent of its annual output, largely in the form of finished steel and highly manufactured products, as compared with only 12 percent in 1905 and approximately the same in earlier years. For semifinished products the need of export markets is somewhat smaller. The export of crude steel in recent years has ranged from 7.8 percent of the total output in 1922 to 4.1 percent in 1931. The capacity of European producers also has increased greatly in recent years. The French industry has augmented its capacity both by higher productivity and by ac-

quisition of the Lorraine iron and steel plants; and while domestic consumption has risen considerably, mainly because of an accelerated pace of industrialization, exports are of ever greater importance to France. England and particularly Germany have likewise increased their capacity, while the growth of home markets has been restricted by national economic crisis and decline. According to a 1928 estimate, Belgium and Luxembourg must export 60 to 75 percent of their iron and steel output, France 40 to 60 percent of its output, and Great Britain and Germany 20 to 35 percent of theirs. Excess capacity and the desirability of continuous operation have forced down prices and profit margins and competition for world markets has been increased in consequence.

Because non-producing countries are not increasing their demands, the iron and steel exports of the world's leading producers in recent years have risen only slightly over those of 1913 (see Table IX on p. 314). The pre-war trend of American exports of iron and steel was distinctly upward; and although the post-war tendencies are somewhat confused, the trend since the Armistice has clearly been downward despite increasing capacity and the need for export markets. The position of the United States in the world trade in these products can be considered without reference to imports, which have remained practically constant for thirty years. American reliance on foreign trade in steel was stimulated by the abnormal wartime activities in the industry, and the aftermath of the war, which placed a premium on domestic production

TABLE IX  
EXPORTS OF IRON AND STEEL FROM LEADING COUNTRIES, 1913-30

	UNITED KINGDOM		UNITED STATES		GERMANY		FRANCE *	
	GROSS TONS	PERCENTAGE OF CRUDE STEEL OUTPUT	GROSS TONS	PERCENTAGE OF CRUDE STEEL OUTPUT	GROSS TONS	PERCENTAGE OF CRUDE STEEL OUTPUT	GROSS TONS	PERCENTAGE OF CRUDE STEEL OUTPUT
1913	4,969,225	64.8	2,907,684	9.3	6,201,616	37.2	619,757	13.4
1920	3,251,225	35.9	4,708,546	11.2	1,723,029	18.9	870,010	20.0
1922	3,397,185	57.8	1,930,577	5.4	2,515,949	21.8	1,936,497	43.4
1923	4,317,537	50.9	1,944,190	4.3	1,306,678	21.1	2,182,388	43.4
1924	3,851,435	47.0	1,708,515	4.5	1,533,929	15.8	2,772,536	47.7
1925	3,731,366	50.5	1,695,716	3.7	3,211,101	26.8	3,045,983	44.4
1926	2,987,930	83.1	2,065,118	4.3	4,823,430	39.7	4,220,452	42.2
1927	4,196,206	46.1	1,947,207	4.3	4,254,525	26.5	5,557,031	55.3
1928	4,260,462	50.0	2,356,038	4.6	4,645,099	32.5	4,060,533	43.6
1929	4,379,405	45.4	2,486,531	4.4	5,487,654	34.3	4,209,697	35.9
1930	3,157,925	43.1	1,634,526	4.0	4,468,822	39.3	4,003,584	36.7

\* Including the Saar from 1925

Source: Compiled from *Statistics of the Iron and Steel Industries*.

in the demoralized countries of Europe, left the United States unable to export the excess over normal domestic requirements. Germany exports about the same percentage as in 1913, but the total has shrunk considerably, while the exports of France have increased absolutely and relatively. The most serious decline is in British exports; the export of iron and steel continues to be much more vital to Great Britain than to the other major producing countries. Competition for foreign markets is aggravated by bounties and rising tariff barriers, including the British tariffs imposed in 1932 in the form of continuing tariffs on certain finished products and temporary duties on certain semifinished products. In the case of the United States the tariff on tonnage steel is now an anachronism, useful only in the protection of scaboard merchant iron producers, in fostering certain of the alloy steels and as an aid in maintaining stability of prices, particularly in the manufacture of specialty products such as tin plate.

Intensified competition for export markets has led in Europe to revivals of international cartels, such as prevailed before the World War. In 1926 an International Steel Entente was formed by the producers of Germany, France, Luxemburg, the Saar and Belgium. Czechoslovakia, Austria and Hungary subsequently joined the cartel. This agreement, scheduled to expire in 1931, proposed to adjust production to demand and to reorganize the market in central and western Europe. The terms of the cartel and the subsequent movement of prices furnish ample evidence that a price agreement underlay

the quotas arranged. The cartel has brought some degree of amity into the politically disunited industry, but its operations have been fraught with great difficulty, particularly in the allocation and enforcement of production and market quotas within the several countries. During 1931 and 1932 negotiations for the renewal of the cartel were delayed by the failure to agree upon quotas. On the other hand, some such international arrangement seems inevitable if the politically disunited industry is to function effectively. Cartels have been formed also among the continental tube, strip and wire industries. In Germany a movement has developed to curb the cartels on the ground that they maintain higher prices in the domestic market and lower prices in the export markets. The cartels answer that lower export prices are to secure foreign markets, and that exports by increasing output make domestic prices lower than they would be otherwise. Domestic attacks on international cartels have aggravated the instability resulting from the efforts of rival national producers to secure larger quotas.

The iron and steel industry has now reached comparative maturity. It seems unlikely that aluminum or any other metal will in the predictable future replace steel in its heavy uses; an iron and steel industry on approximately its present scale is indispensable for the maintenance and growth of material civilization under the conditions of technology now prevailing. The market, however, no longer expands as it did from 1870 to 1900, and production in recent years has remained relatively constant.

Meanwhile centralized organization, integration and concentration, a substantial degree of co-operative action and the availability of comprehensive trade information provide the managements of steel companies with an unusually adequate basis for effective planning. In addition to internal problems of organization and production there are two important international problems—the intensification of competition for export markets and the control and distribution of the raw materials scattered all over the world. What developments the future will bring in this vital industry is a matter of the utmost concern to every national community as well as to the society of nations.

MEREDITH GIVENS

**LABOR CONDITIONS.** *United States.* The largeness of capital units, the necessity of continuous processing in basic operations and the extensive mechanization characteristic of iron and steel production have been dominant factors in determining the status of labor in the industry. Labor is mainly unskilled or semi-skilled; hours are unusually long and the work arduous; and unionism has been effectively resisted by the giant corporations. In 1930 four large companies employed an overwhelming majority of the 577,000 iron and steel workers; nearly one half were employed by the United States Steel Corporation. The existence of large immigrant groups has complicated the work of organization, and craft separatism has played an important role in retarding unionism.

Although lifting and conveying machinery tended by "control workers" has largely replaced brawn in furnace operation, many unskilled workers, frequently recruited from immigrant groups, are still required for repairs, replacements and handling of materials. Many jobs involving high skill especially in heating processes have been abolished through technical changes. While the tasks of steel workers are not in general as monotonous as assembly work, except perhaps in the finishing trades, many men must labor in dirty, hot, drafty surroundings. The melting process involves an alternation of periods of intense activity and periods of less arduous work. Despite relatively high full time weekly earnings living conditions dominated by the long day or by irregularity of employment have been extremely poor. In many steel centers special problems have arisen in conjunction with the company town.

When the industry was first established in

America it used charcoal for fuel and was consequently localized in rural sections. Indentured Scottish prisoners taken by Cromwell, slaves, convicts and redemptioners were employed at various times and places. Skilled workers of the Saugus Iron Works of Massachusetts, established in 1643, were generally paid 2½ shillings (\$.42) a day plus board valued at \$.94 a week. At the Stiegel furnaces in Pennsylvania in the first half of the eighteenth century prevailing daily rates were 1½ and 2 shillings (\$.19 and \$.266) and board. In 1795 South Carolina steel workers received the value of \$9.00 to \$11.90 a month in bar iron or castings, from which \$4.50 was deducted for board. A Treasury report in 1832 estimated average daily pay at \$1.00, with more highly skilled men in New York and Connecticut receiving \$2.00.

The trend of wages in recent years, as shown in Table I, indicates an increase of 35 percent in real wages between 1890-99 and 1926, most of the increase appearing during the World War.

TABLE I  
EARNINGS OF IRON AND STEEL WORKERS IN THE UNITED STATES, 1890-1926

YEAR	AVERAGE ANNUAL MONKEY EARNINGS	INDEX OF REAL EARNINGS (1890-99 = 100)
1890	\$ 550	103
1900	567	104
1910	697	106
1920	2015	137
1921	1394	110
1922	1314	111
1923	1640	136
1924	1638	136
1925	1659	135
1926	1687	136

Source: Douglas, P. H., *Real Wages in the United States, 1890-1926* (New York 1930) p. 271-72

Between 1926, when the level was slightly below that of 1920, and March 31, 1931, hourly rates and full time weekly earnings turned slightly upward, the former rising from \$ 637 to \$.663, the latter from \$34.41 to \$34.58. Wage cuts in 1931 and 1932 substantially reduced both rates. Rates for unskilled labor working a 10-hour day in United States Steel Corporation plants rose from \$2.00 in 1915 to \$5.06 in 1919. A series of reductions had brought the figure to \$3.00 in August, 1922. A rate of \$4.40 established in August, 1923, was continued for eight years. In the fall of 1931 a reduction of 10 percent was made; in May, 1932, another of 15 percent. Estimated full time earnings in 1931

for different branches of the industry are shown in Table II.

TABLE II  
ESTIMATED FULL TIME EARNINGS OF IRON AND STEEL  
WORKERS IN THE UNITED STATES, 1931

DEPARTMENT	AVERAGE EARNINGS PER HOUR	AVERAGE FULL TIME HOURS PER WEEK	AVERAGE FULL TIME EARNINGS PER WEEK
Blast furnaces	\$.551	57.2	\$31.52
Bessemer converters	.664	53.3	35.39
Open hearth furnaces	.703	53.8	37.82
Puddling mills	.592	53.0	31.38
Blooming mills	.664	52.6	34.93
Plate mills	.627	56.7	35.55
Bar mills	.588	55.0	32.34
Sheet mills	.747	47.8	35.71
Standard rail mills	.613	54.9	33.65
Tin plate mills	.714	47.0	33.56

Source: *Monthly Labor Review*, vol. xxxiii (1931) 1184 and 1447-48, and vol. xxxiv (1932) 145.

Technical improvements and in the last few years speed up methods displaced considerable steel labor prior to the 1930 crisis. Between 1926 and 1928, when production advanced about 7 percent, employment dropped 9.1 percent and actual pay rolls 7.3 percent. In 1930 employment was 15.5 and pay rolls were 20.2 percent below the 1926 level; in 1932 both were considerably lower. Employment in Pennsylvania, where about one third of the industry is located, was in March, 1932, about 25 percent below the figures for January, 1931, while pay rolls were more than 40 percent lower.

Hours, especially in the continuous processes, have always been long; marked reductions date only from 1922 and the change is still far from complete. In 1913 full time blast furnace workers in plants surveyed by the United States Bureau of Labor Statistics averaged 76.9 hours a week. This total was gradually reduced until in 1922 it reached 72.3. After an abrupt drop to 59.7 in 1924 it rose slightly but in 1931 receded to 57.2. The average hours of full time Bessemer converter workers dropped from 70 in 1913 to 53.3 in 1931, while those of open hearth furnace workers fell from 76.7 to 53.8. Beginning in 1919 public sentiment against the 12-hour day and 7-day week increased and was crystallized in part by the publications of the Inter-Church World Movement, the Federated American Engineering Societies and the Federal Council of Churches of Christ in America. Although in 1924 the American Iron and Steel Institute, an organization of steel manufacturers, was forced by this sentiment to promise the

gradual elimination of these conditions, they still exist for a considerable percentage of workers especially in basic processes. The study by Hartl and Ernst indicates that of 300,000 steel workers surveyed in 1929 more than half were working 10 hours or more a day and more than a quarter were on a 7-day week basis, which "remains the heaviest burden on the workers in the steel industry." Maintenance crews have lagged most in effecting a reduction of working hours.

According to the United States Bureau of Labor Statistics accidents in the iron and steel industry have declined materially since 1907 (Table III). In that year workers were killed or injured at the rate of 80.8 for every million man hours of exposure (frequency rate), and for every thousand man hours of exposure 7.2 days were lost as a result of accidents (severity rate). In 1930 the frequency rate had been reduced to 18.6, a decrease of 77 percent, and the severity rate to 2.5, a decrease of 65.3 percent."

TABLE III  
ACCIDENT RATES IN IRON AND STEEL IN THE UNITED  
STATES, 1907-11 AND 1926-30

DEPARTMENT	FREQUENCY RATE (PER 1,000,000 MAN HOURS)		SEVERITY RATE (PER 1000 MAN HOURS)	
	1907-11	1926-30	1907-11	1926-30
Blast furnaces	76.1	23.1	10.6	4.2
Bessemer converters	101.5	10.4	7.6	3.8
Open hearths	84.2	17.6	7.5	4.4
Heavy rolling mills	61.0	10.0	4.4	2.1
Plate mills	69.4	15.2	5.1	2.1
Sheet mills	44.1	19.4	3.1	1.4
All departments	69.2	21.9	5.0	2.4

Source: *Monthly Labor Review*, vol. xxxiii (1931) 1035.

The bureau reports that in a selected group of plants where safety work has been stressed the reduction in accident frequency since 1913 has been 87.2 percent as against 15 percent for plants in which such work has not been emphasized.

Many iron and steel workers are subjected to wide and rapid variations of temperature. United States Public Health reports show that pneumonia occurs at almost twice the frequency among such workers as it does among those in a group of miscellaneous industries. The effect of radiant furnace energy upon health has been studied, but conclusions of such research are of uncertain value because of the probability that

workers continuing in these trades have superior physique and are more likely to resist disease.

Leaders in the steel industry, wielding arbitrary authority over a large number of unskilled workers, have not chosen to be innovators in welfare work, except possibly in safety work. The United States Steel Corporation was one of the first large companies to launch a plan of stock sales to employees. On December 31, 1926, after twenty-three years of sales, 47,647 employees were reported to own 163,802 shares of its preferred stock and 501,999 of its common stock. The plan has not resulted in transferring any control to labor, and in the long market decline beginning in 1929 many of the employees' stockholdings were wiped out. Housing and recreational programs have been developed by the United States Steel Corporation, especially for skilled workers. Pensions have been established out of a fund created jointly by Carnegie and the corporation. A considerable number of workers, chiefly in the Bethlehem Steel Company and the Colorado Fuel and Iron Company, have been given "employee representation," otherwise known as the company union. The workers are frequently afraid to bring important grievances before their "representatives" or the latter are afraid to fight for them. Wage cuts are often readily endorsed by company unions on the grounds that they cannot expect more than is paid by the largest industrial unit, the United States Steel Corporation, which is an open shop.

As in other countries the metal workers of the United States were early among the most advanced elements of the working class. They organized with vigor and persistence, experimented boldly and conducted many important and successful strikes. But with the displacement of many skilled workers by technical developments and with the failure of the unions to abandon with sufficient rapidity their craft basis unionism ceased to be a power. American steel corporations increasingly hostile toward labor organizations have used violence, spy systems, political pressure and economic controls to resist even conservative trade unionism. The industry was being organized into ever stronger units capable of putting up a hard fight against organization by the workers. Once unionism was broken in the leading plants it was doomed throughout the industry, and today less than 5 percent of the workers are organized.

The United Sons of Vulcan, the union of skilled iron puddlers organized in 1858 to resist

wage reductions following the panic of 1857, won in 1864 a sliding scale wage agreement based on the price of pig iron. In 1866 it wrote the first national agreement in American history and seven years later its membership reached a peak of 3331. In 1876 it joined with the Associated Brotherhood of Rail Heaters of the United States (founded in 1861 and later known as the Associated Brotherhood of Iron and Steel Heaters, Rollers and Roughers) and the Iron and Steel Roll Hands Union (founded in 1870), organizations of skilled workers, to form the Amalgamated Association of Iron and Steel Workers of the United States with 3000 members. Skilled tin workers were admitted in 1881. By 1891 the Amalgamated included 24,068 workers, about one quarter of those eligible, and had become a most powerful union. Its strongholds were the Pittsburgh and Youngstown districts, especially the iron mills, where as late as 1889 it was able to dominate the wage negotiations with employers. Because of the constant introduction of new processes, however, agreements with manufacturers were unstable and increasingly difficult to reach. Moreover in the 1880's the Knights of Labor challenged the power of the Amalgamated through National District Assembly 217, Iron, Steel and Blast Furnacemen, especially by taking in the unskilled workers barred from the Amalgamated. This threat soon died, but jurisdictional friction was rife among craft groups in the Amalgamated. Puddlers, roll turners, tin plate and rod mill workers successively threatened secession and some elements split off. In the Homestead strike of 1892 Andrew Carnegie and H. C. Frick employed private detectives and the state militia in a bitter union breaking campaign; as a consequence the Amalgamated lost control of the Carnegie shops and began to decline rapidly. In August, 1901, it made a vigorous but unsuccessful attempt to unionize workers of the hostile United States Steel Corporation and as a result lost its agreement with three of the corporation's large constituent companies. Minor strikes at McKees Rocks in 1909, Bethlehem in 1910 and Youngstown in 1916 were likewise unsuccessful. After 1910 insurgent movements led by the Industrial Workers of the World both within and without the organization helped to democratize the Amalgamated and in 1911 unskilled workers were nominally admitted to membership. The organization continued to seek out only the skilled workers, however, and in strikes of 1909 and 1919, in the latter case aided by several al-



lies, it was defeated by the fierce opposition of giant corporations.

An attempt to organize steel workers on a broad basis was launched on September 22, 1919, by a National Committee for Organizing Iron and Steel Workers. Led by William Z. Foster, it was backed at the outset by the American Federation of Labor and by twenty-four co-operating unions with jurisdictional rights in the industry. According to the union estimate 365,000 workers were brought on strike by an intensive campaign. Their demands were: the right of collective bargaining, the 8-hour day, one day's rest in seven, wage increases "sufficient to guarantee American standards of living," double pay for overtime and Sunday and holiday work, seniority, abolition of physical examination of applicants for employment and reinstatement of those discharged for union activity. The strike was met by a campaign of terrorism conducted by burgesses, magistrates, police and constabulary. Gangs of Negro strike breakers were imported from the south. The failure of the strike in December, 1919, was due not only to the terrorism but also to lack of coordination arising from the weakness of the craft structure, to the action of the steel companies in raising wages and allowing overtime pay in the months just preceding the strike call, to a "Red" scare initiated by the press, to the ability of highly integrated companies to shift production to areas in which the walkout was not fully effective and to the failure of the American Federation of Labor to stand by at critical junctures.

Largely by sufferance of a few employers the Amalgamated lingers as a conservative relic with a declining membership in wrought iron and a few sheet, plate and bar mills. Its jurisdiction is challenged by the Metal Workers' Industrial League, an affiliate of the Trade Union Unity League, which is attempting to organize the steel industry as part of the campaign to unionize the unorganized basic industries.

COLSTON E. WARNE

*Other Countries.* Because of the tendency to concentrate in certain relatively restricted areas and the general similarity of the processes involved, there is less variation from country to country in labor conditions in the iron and steel industry, including blast furnaces, steel works and rolling mills, than in many other industries. While American and European wages differ markedly, wages and hours in European

countries tend to move together since the large producing areas depend on export markets for their very existence; 20 to 75 percent of their output must be exported to utilize capacity fully. At the same time many important differences exist, and nowhere more than in the field of labor organization.

THE NUMBER OF WAGE EARNERS EMPLOYED IN THE IRON AND STEEL INDUSTRY IN THE PRINCIPAL PRODUCING COUNTRIES\*

COUNTRY	YEAR	WAGE EARNERS (in thousands)
United States	1930	577
Great Britain	1929	252
U. S. S. R.	1929	202
Germany	1925	139
France	1926	114
Belgium	1926	40
India	1929-30	29
Sweden	1925	25
Spain	1924	21
Luxemburg	1930	17
Canada	1929	11

\* Although care has been taken to include all wage earners employed in blast furnaces, steelworks and rolling mills and no other workers, differences in classification may render the figures not strictly comparable.

*Source:* United States, Bureau of the Census, *Fifteenth Census of the United States 1930, Population* (1932) vol iii, pt. 1, p. 22, Union of Soviet Socialist Republics, Tsentrálne Statisticheskoe Upravlenie, *Narodnoe khozyaystvo SSSR Statisticheskoye spravochnik* (National economy of the U.S.S.R. Statistical guide) (Moscow 1932) p. 425, 138, Great Britain, *Ministry of Labour Gazette*, vol xxviii (1930) 26, Germany, *Verein deutscher Eisen- und Stahl-Industrieller, Nordwestliche Gruppe, Statistischer Jahrbuch für die Eisen- und Stahlindustrie* (Düsseldorf 1930), France, Bureau de la Statistique Générale, *Statistique générale de la France. Résultats statistiques du recensement général de la population effectué le 7 mars 1926*, 3 vols. (Paris 1928-31) vol 1, pt iii, p. 40, 130, Belgium, Ministère de l'Industrie, du Travail et de la Prévoyance sociale, *Enquête sur la situation des industries 31 octobre 1926*, 2 vols. (Brussels 1927-28) vol ii, p. 21, Great Britain, Royal Commission on Labour in India, *Report*, Cmd 3883 (1931) p. 33, International Economic Conference, *Documentation. Memorandum on the Iron and Steel Industry*, League of Nations publication, 1927 ii 8 (Geneva 1927) p. 57, Luxemburg, Chambre de Commerce du Grand-duché de Luxemburg, *Rapport sur la situation de l'industrie et du commerce en 1930* (Luxemburg 1931) p. 18-20; Canada, Bureau of Statistics, *Iron and Steel and Their Products in Canada, 1929* (Ottawa 1932) p. 27.

In the leading iron and steel countries, which together produced 86 percent of the world's pig iron and raw steel in 1930, more than 1,425,000 wage earners are normally employed in the industry. This is a minimum estimate; for Belgium, Sweden, Spain, Luxemburg and Canada the number of workers is probably underestimated. Since 1929 because of the depression the trend of employment has been seriously downward in all countries except the Soviet Union, where reports as of January, 1931, show an increase to 230,300 workers. The number employed in the Soviet Union has apparently

approached the number employed in Great Britain, where the figures compiled for July, 1931, from the live registers of the employment exchanges showed a total of 239,410 wage earners in the iron and steel industry.

Up to the time of the World War it was customary for iron and steel workers on continuous processes to work the two-shift system, which has now given way to the three-shift system in all the countries. The bulk of the British blast furnaces have been on three shifts since 1898, as have at least two British open hearth plants since 1905. The rest of the British industry adopted three shifts in 1919. Germany adopted three shifts in the immediate post-war period, but after the Ruhr occupation the employers were permitted to reintroduce the two shifts in order to recoup their finances; in 1925 and 1927 official decrees restored the three-shift system. Luxemburg legally adopted the 8-hour day in 1918. The decree introducing the three-shift system into the French industry was promulgated in 1920, and Belgium followed the next year. In India the great plant of the Tata Iron and Steel Company at Jamshedpur, which opened six years before the war on a three-shift basis, still retains it. Japan is apparently the only producing country of any importance in which the 12-hour day in continuous processes is still the rule. The change to three shifts has been made for social rather than economic reasons under pressure of labor and public opinion and the reduction of hours in other industries.

The 7-day week in blast furnace and some continuous steelworks operations was still common in 1932 in all the leading producing countries except the Soviet Union. In the maintenance and other non-continuous processes the 57-hour week is the rule in Germany, and the 8-hour day and 44 or 48-hour week in England; but workers in American plants often work 10 hours a day 6 days a week and in the smaller plants they usually work from 1 to 3 hours longer when there are rush orders. The French decree regulating hours in heavy industry permits work longer than 8 hours "in case of emergency," but most maintenance work may be classed as emergency work. Overtime is supposed to be paid at extra rates in France, but only for the first 140 hours of such excess per year. In the Soviet Union departures from the 8-hour day are officially prohibited, and the 7-hour day is the rule in many cases.

Comparisons of money wages in different countries can best be carried out by taking the

starting rate for unskilled adult male labor; it should be noted, however, that in Germany 86 percent of the heavy industry workers are paid on piecework or bonus systems, that in England piecework is also common and that in general the common labor rate does not have in Europe the preponderating importance it assumes in the United States. At the beginning of 1930 unskilled labor was receiving an average "normal" weekly wage, including family allowances and other social allowances, of \$7.77 in France, \$7.40 in Belgium, \$7.68 in Luxemburg and \$11.28 in Germany (this figure includes some pieceworkers). Unskilled British workers were earning about \$10.00 a week when steadily employed. Common labor in the Birmingham, Alabama, plants of the United States Steel Corporation were paid \$18.60 per week for maintenance work, and in the Pittsburgh area \$26.40. Unskilled male industrial labor in India earned in 1930 from 10 to 15 rupees (\$3.65 to \$5.48) per month, but the rate at the Jamshedpur steelworks has always been above the prevailing rate in other industries. Men's wages in Japan before 1929 ranged from \$.50 per day upward, supplemented usually by bonuses and allowances in kind. In the Soviet Union after the 40 percent increase of October 1, 1931, the day rate for the lowest grade of unskilled labor was 3½ rubles a day, which at the official quotation of foreign exchange is equivalent to \$1.80; in addition more than 20 percent is added to wages by social benefits, or "socialized wages" as the Russians call them.

The trend of real wages, defined as the power of full time money wages to buy goods and services, has been downward since 1929 in all countries except the Soviet Union. In the period from 1923 to 1929 real wages were highest in the United States, followed by England, Germany, France and Belgium. But the prevalence of unemployment in the first three countries raises doubts as to the value of estimates based on full time wages, and the apparent differential in favor of the American iron and steel workers is materially lessened in fact by the failure of the United States to provide unemployment insurance.

The differential between the lowest and highest wage rates paid in the industry appears to be greatest in the United States, where some wage earners (rollers) earned in 1929 as much as \$450 a month. It is also great in India and South Africa, where the unskilled workers are natives while the skilled workers are imported mainly

from England and are paid higher wages than they would earn at home. The differential is greater in England than on the continent of Europe. In the Soviet Union the differential was recently increased. Since October 1, 1931, workers are divided into eight earnings groups, and the ratio of earnings in the highest to those in the lowest groups is 3.7 to 1 instead of 2.8 to 1 as formerly.

Figures are lacking for a satisfactory comparison of the accident risk in the iron and steel industry of the several countries. Examination of such material as is available leads to the conclusion that accident rates have been reduced in all countries, partly through planned safety work undertaken under the stimulus of workmen's compensation laws and partly through revision of the industry's technique, but that the reduction has not been as rapid in Europe as in the large plants of the United States. Since the accident risk in the United States and Germany seems now to be roughly the same, one may infer that the American risk before the beginning of the safety campaign in 1907 was inordinately high. It is noteworthy that the early American compensation laws were modeled largely on the European, whereas the technique of safety campaigns as developed in the United States, largely on the initiative of the iron and steel industry, is now serving as a model for both public and private bodies in Europe. The advance of mechanical improvement has caused a diminution of the excessively hot work, which has made iron and steel workers especially subject to respiratory ailments, and has diminished the danger from such special occupational diseases as "hot mill cramps."

Major shifts in the relative importance of different producing areas since the war coupled with rapid technical advance in the midst of the general economic crisis have produced in Germany and England a chronically unemployed group of iron and steel workers. This group included in Great Britain about 25 percent of the wage earners in the industry during the five years beginning with 1925. But while the British blast furnace industry has been declining, and the industry in general has failed to produce more steel in any post-war year than in 1917, certain branches, such as tube manufacture, have expanded employment. In France, Belgium and Luxemburg, however, the expansion of the iron and steel industry (partly responsible for the German and British decline) necessitated recruiting labor from abroad. The depression

which began in 1929 caused unemployment in all countries except Soviet Russia, where production and employment continued to increase.

In contradistinction to the United States, where it is almost wholly absent, collective bargaining prevails to a certain extent in the European iron and steel industry. Although the industry participates in the various national plans for labor-capital cooperation, particularly in Germany, the employers usually resist unionism, which is not as highly developed as in most other industries. In the resistance to unionism the same methods are employed as in the United States—spy systems, terrorization of workers and organizers, pressure through company housing, and similar measures.

Trade unions have flourished in the British heavy industry ever since its inception. A number of these unions amalgamated in 1916 in the British Iron and Steel Trades Confederation, organized largely on an industrial union basis. Twelve years later this union claimed 53,328 members, most of them in the affiliated union known as the British Iron, Steel and Kindred Trades Association, covering skilled and semi-skilled workers in the steelworks, rolling mills and tin plate works of the whole country and the blast furnace industry of Scotland. The trend toward industrial unionism is, however, not complete; there exists an independent organization, the National Union of Blastfurnacemen, Ore Miners, Coke Workers and Kindred Trades with 15,000 members in 1928, and in addition some thousands of laborers from the heavy industry are affiliated with the National Union of General and Municipal Workers and other unions of unskilled workers. Since the war union membership has not held its own and the depression which began in 1929 precipitated a marked decline. Working conditions are regulated by collective agreements and by joint wage boards set up by government intervention. Most of the agreements contain provisions for some form of wage sliding scale regulated by the selling price of the product. This plan was formerly used quite generally in the coal and iron industries of Great Britain and the United States but has passed out of favor in the coal industry, although it persists in the unionized section of the American iron and steel industry. Since 1865, when unionism was first firmly established in the British industry, there has never been a strike (other than local stoppages) except for the walkout of the iron and steel workers during the general strike of 1926.

In England the unions of iron and steel workers are distinct from the unions of machinists and other workers in the engineering trades. On the continent, however, the organized iron and steel workers usually belong to larger unions of metal workers, which include machinists and other workers in the engineering trades. The problem of organizing the iron and steel workers in Germany has been largely the problem of penetrating the mammoth plants of Rhineland-Westphalia, which operated on a non-union basis until the outbreak of the war. The German Metal Workers' Federation claimed jurisdiction over the iron and steel industry and carried out repeated propaganda and organization campaigns in the Ruhr and Saar valleys without much success. The growth of organization during the war was rapid; in November, 1918, the first general collective agreement was signed with the organized employers in the iron and steel industry. The works councils for a time threatened the supremacy of the unions, but were finally subordinated to the unions. Many steel workers in the Ruhr participated in the miniature insurrection of 1920, which followed the Kapp *Putsch* and had for its object the overthrow of the capitalist government. The unions and employers have had frequent recourse to the machinery of arbitration set up under the new labor code. In 1928 the employers defied an arbitral decision and a lockout of about a month ensued, resulting in a compromise. The German Metal Workers' Federation in the Ruhr had about 50,000 members in 1928; an equal number of iron and steel workers are organized in the Christian Metal Workers' Federation, which rejects the socialism of the "free" unions.

The French metal workers' federation has always been industrial in form, but the unions are still largely localistic in spirit and their benefit system is relatively undeveloped. From 1905 to 1907, only a few years after the rapid development of the Briey basin had begun, the union conducted a series of bitterly fought strikes in the Longwy district of French Lorraine but was defeated. During the war the fact that the bulk of the French plants were behind the German lines and were not running prevented the growth of unionism. After the war the plants were rebuilt and greatly extended but on a non-union basis. For a number of years after the union split of 1921 neither the half which remained in the *Confédération Générale du Travail* nor the half which went over to the *Con-*

*fédération Générale du Travail Unitaire* (affiliated with the Red International of Labor Unions) made much progress in the Lorraine iron and steel industry, although both applied themselves to the task. As in the United States the problem of labor organization has been complicated since the World War by the fact that more than half of the iron and steel workers are immigrants, a large number of them from Poland and Italy.

About 60 percent of the workers in Belgian industry were organized in 1930, the majority in the *Centrale des Métallurgistes de Belgique*. The *Centrale*, which has a very well rounded system of benefits, was able to carry on a strike (precipitated by a lockout) of about 15,000 in the iron and steel industry of the Charleroi district for more than eight months ending in February, 1926. Since the war collective bargaining has been carried on through a national mixed commission, consisting of a president, nominated by the state, and representatives of the employers and workers, including among the latter all the unions in the industry; but the recommendations of the commission are not binding. A somewhat similar system of bargaining prevails in Luxemburg, where unionism was first established on a firm footing during the World War. It has been estimated recently that 38 percent of the heavy industry workers in Luxemburg are members of the labor union, which comprises both miners and iron and steel workers.

The history of unionism in the various countries suggests that a most important factor influencing the success of labor organization is the degree of concentration of control in industry. When one employer or a close federation of employers dominates the field, the task of the unions is very difficult. Thus the Carnegie interests in the United States were able to drive the unions out of their plants within a few years after they had emerged as the dominant steel makers of the country. All the French employers accepted the leadership of Robert Pinot in the strike of 1905-06 and have since formed very closely knit trade and employers' associations which have successfully resisted unionism. It is significant that the German employers did not lock out the workers in the post-war period until after the formation of the United Steel Works, a dominant firm with a productive capacity of 40 percent of the country's total. In England, where unionism is most strongly established, a single firm has never

dominated the industry. In India, however, the Tata Iron and Steel Company, one of the largest concerns in the country, has seen the establishment of unions among its imported skilled workers, as well as among the native workers, who put their organization to the test of a strike in 1928 after having maintained it for some years previously.

Unionization has been hampered in countries where development has been most rapid and great numbers of workers have been drawn suddenly into the industry from a rural or semi-rural background. In cases where these newcomers speak a different language, as in the United States before the war and in France, Belgium and Luxemburg after the war the problem of unionization is further complicated. Isolation from other industries has seemed to work against unions in the Saar, Luxemburg and Lorraine and in the American industry with its company towns. On the other hand the steel workers of Jamshedpur, India, have achieved organizational results despite the fact that they were for the most part recruited from an agricultural population scattered through all parts of a large and polyglot country.

In all countries, even where industrial unionism prevails, labor organization is based on the skilled workers. The unskilled have usually followed the lead of the skilled and have been unable to establish organizations of their own except where the skilled workers were already organized or organizing.

The success of unionism in the iron and steel industry of Great Britain, as compared with that of the United States, is to be explained largely on the basis of the different degree of technical development in the two countries and indirectly by the different geographical conditions that led to mass production in the one country and to relatively small scale competitive production in the other. The industrial unions of the continent have demonstrated their capacity to penetrate heavy industry, but it is not yet clear that the penetration is permanent; nevertheless, the comparative absence of craft separatism in Europe makes the problem of organization more easily solvable than in the United States. The experience of Europe has shown also the great usefulness of labor political parties in stimulating and maintaining trade union organization in the large scale trustified industries.

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See: METALS; INDUSTRIAL REVOLUTION; INDUSTRIAL-

ISM; MACHINES AND TOOLS; CONTINUOUS INDUSTRY; LARGE SCALE PRODUCTION; BASING POINT PRICES; COMBINATIONS, INDUSTRIAL; CARTILL; DUMPING; INDUSTRIAL HAZARDS; ACCIDENTS, INDUSTRIAL; SAFETY MOVEMENT, COMPANY TOWNS; COMPANY UNIONS; MACHINERY, INDUSTRIAL; MUNITIONS INDUSTRIES; AUTOMOBILE INDUSTRY; CONSTRUCTION INDUSTRY; TRANSPORTATION; COAL INDUSTRY.

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**IRREDENTISM.** The term irredentism is derived from the Italian *irredenta* (unredeemed). The concept originated in the nineteenth century in connection with the Italian movement which after the unification of Italy aimed at the annexation of Italian speaking regions still under Austrian or Swiss rule, such as Trent, Dalmatia, Istria, Trieste and Fiume. The concept, however, has become detached from its concrete and specific connotation and has come to denote any movement which aims to unite politically with its co-national mother state a region under foreign rule. Since national and political frontiers seldom coincide, irredentism belongs to those movements which since the nineteenth century have been especially directed against the political status quo.

At the basis of irredentism lies that principle of nationality which was developed by Mazzini and Mancini and which was a popular slogan of European politics at the time of Napoleon III; namely, the principle that national and political frontiers should coincide. In the field of foreign affairs this principle gives rise to irredentism; applied to domestic politics it sanctions the assimilation by the dominant majority of the subject minorities differing from it in language and race. Irredentism also finds justification in the principle of democracy, for it takes its starting point from the principle of self-determination of peoples and from the conviction that the sovereignty of a state over a given territory is legitimized not by dominion or international treaties but by the homogeneity of the population and by the consensus of opinion resulting from this homogeneity. Since democratic doctrine regards the state as an institution of national self-organization, ethnic homogeneity and national completeness of the population are decisive guarantees for the stability of the state. All other motives, such as regard for the sacredness of treaties and of the oath of allegiance, are sacrificed for the sake of this supreme principle. Accordingly Masaryk proclaimed the primacy of national loyalty over state loyalty, thus virtually sanctioning high treason.

The development of these principles provided a moral and psychological basis for revolutionary nationalism, which with the aid of modern methods of organization and propaganda supplied the border populations with a technique of rebellion against their political sovereigns. This propaganda is, on the one hand, carried on by organizations consisting of the dissatisfied elements of the irredentist population who appeal

to the mother state for help; and, on the other hand, by the press, associations and parties in the neighboring state, which working secretly and generally also as indirect organs of the state are interested in the fate of the co-national region and in preparing for its future annexation. This often gives rise to serious international friction, as in the case of the Austro-Serbian relations during the period before the World War and in the German-Italian friction over the German population in the Tyrol. In the decades that preceded the war the extremist elements of the irredentist regions in Italy developed a technique which enabled them to keep in constant touch with the influential spokesmen of the masses in the mother state. The Italian government, however, in view of its alliance with Austria-Hungary kept aloof from these tendencies of national solidarity and sometimes even disavowed them; but after the interventionists carried the day in the World War it formally gave up its dualistic policy in favor of an outspoken policy of conquest, which it carried even beyond the irredentist regions in the proper sense of the term, extending its claims to purely German and purely Slav provinces.

Within the territories inhabited by the irredentist groups irredentism does not find active support among those elements whose interests may be adversely affected by a change in the status quo or by any revolutionary and military convulsions. This is particularly true of those persons who are prevented by professional and business interests or by social position from embarking upon a policy of open national partisanship and of opposition to the existing state power and its organs. Irredentism is championed most passionately by the youth, by academic circles, by certain liberal professions and by the press in so far as any articulate expressions are permitted by the state. The majority of the population is usually ready to compromise and to accept the traditional rule and the customary boundaries, restricting its activities to seeking more favorable national-cultural and economic conditions. Very often its attitude is opportunistic and it is the first to join the irredentist movement as soon as it gives promise of achieving success. The differences, however, between the groups and classes which keep aloof from irredentism and those which actively support it tend to become more relative and less rigid as the state and the nationalism of the dominant majority begin to interfere with the life of the individual.

The history of Europe even before the World



War shows that wars are never a remedy for irredentism. Some border territories, like Macedonia, contain populations whose ethnic and national make up is most difficult to determine; and in very large territories of mixed population it is impossible to draw a sharp line of territorial demarcation between the various ethnic communities. New national frontiers set up by peace treaties almost invariably leave some elements dissatisfied and merely serve to call forth new irredentist movements. The difficulties of solving irredentist problems in this way are clearly illustrated in the treaties of Versailles, Saint-Germain and the Trianon, which represent the most far reaching attempt ever made to reorganize large territories on the principle of nationality. Although official sanction was given to the principle of national self-determination and an important aspect of irredentism was thus recognized as a basis for the new order, the Paris Peace Conference was unable to carry out this principle in a practical way because of the selfishness of the victorious nations as well as the obstacles offered by geo-political and economic factors. As a result foreign rule was extended not only over outlying scattered settlements but also over territories compactly inhabited by subject peoples; and thus germs for new irredentist movements were planted. German border regions came under the dominion of France, Belgium, Denmark, Lithuania, Poland, Hungary, Czechoslovakia, Rumania, Yugoslavia and Italy; strong irredentist tendencies have developed among the Magyars in the territories which Hungary had to cede to Czechoslovakia, Rumania and Yugoslavia; there is a Bulgarian irredentism which is directed against Rumania in Dobruja and against Yugoslavia in Macedonia; the Ukrainian, White Russian and Flemish questions are still unsolved or unsatisfactorily settled. In all about 40,000,000 people belonging to ethnic minorities remain in a state of national discontent.

As counter-remedies for irredentist difficulties three methods have been suggested: the rectification of frontiers, assimilation and accord of interests. A state that rules over a foreign territory against the will of its inhabitants may voluntarily renounce for higher reasons of state or under military or revolutionary compulsion the exercise of its sovereignty and allow the territory either to become independent or to join the co-national state. Generally a union of this sort, even though it might redound to the benefit of the renouncing state, is prevented by reasons of

prestige or by the possibility of repercussion upon domestic and international politics.

Instead of regarding the seat of sovereignty as variable and adapting state affiliations to the ethnic structure and the racial will, the method of assimilation is often attempted. The dominant national group tries to destroy the roots of irredentism through the denationalization of minorities by assimilating the heterogeneous groups with the dominant national majority. The degree of compulsion which is applied is determined by various factors. It depends upon whether and how far the racial minorities are prompted by extra-ethnic interests to remain within the original state union and how far the assimilatory tendencies of the state have been furthered by the existence of self-assimilatory tendencies in the subject racial groups or in certain social elements. It is also true that it is not always possible to change the political affiliations of a group without calling forth religious, economic, social and cultural transformations. If these changes signify a new form of suppression, the process of assimilation is rendered difficult. Other factors, such as economic enrichment, a rise in the educational level and social advance, indirectly further assimilation.

If the attempt to change both the dominant sovereignty and the ethnic character of the racial groups is abandoned, then a compromise must be found outside the alternative between irredentism and assimilation—between revolt against the state on the one hand and extermination of nationality on the other. Tolerance on the part of the state and loyalty on the part of the racial groups are here in a relationship of natural reciprocity in so far as tolerance is not a sign of weakness and loyalty is not an expression of national indifference. The aim must be to find political and national forms which would enable the members of the subject racial minorities to participate in the general life of the state without affecting their national ideals and to take an interest in the life of their groups without interfering with their patriotism toward the state. A harmony must be established between loyalty to the state and adherence to the life of the national group, although the two do not coincide. If the attempt is made to satisfy the members of the minorities upon a more individualistic basis, then the state must above all give them full rights both *de facto* and *de jure* in all walks of life. Moreover the state must guarantee the individual a sufficiently extensive private sphere either as a matter of general policy or as a special

privilege for the subject minorities. One of the chief causes of irredentism lies precisely in the attempt on the part of the state to interfere with spheres which formerly were outside state jurisdiction. The corporative forms of satisfying the various national groups involve the granting of national autonomy either on a personal or on a territorial basis. This enables the minorities to develop special co-national spheres, either objective or locally delimited, which do not interfere with the sovereignty of the dominant state. In the former case the danger of irredentism for a given state is mitigated by the mutual isolation of the members of the minorities. In the latter case the autonomistic method with general decentralization, regional self-government and cultural autonomy offers through the segregation of minorities as wholes an excellent means of avoiding conflicts between the will of the groups and the authority of the state or of confining possible frictions to isolated cases.

During the post-war period no steps have been taken to redraw obviously unpractical boundary lines to satisfy ethnic discords. Even in the case of Eupen-Malmédy, where both Belgium and Germany as well as the affected population itself have been friendly to a revision, nothing has been done because of the objections made by France. Only in exceptional cases have states displayed a readiness to abandon assimilatory policies. The situation of the minorities has been made especially precarious by such important contemporary tendencies as plebiscitary democracy, state socialism in the economic and cultural fields, fascism and national socialism, collectivism and mass terror. On the other hand, the task of assimilation is rendered equally difficult by the general state of education, by the general increase of national consciousness and by the wide diffusion of the theories of political nationalism. The failure of the revision of frontiers combined with an intensified assimilatory pressure consequently tends to foster the discontent of the minorities and in this way to further irredentism.

Two types of method have been resorted to in the post-war period in order to counteract national oppression and irredentism. One method is the international legal protection of minorities provided for by the Treaty of Versailles, whereby provisions were made for possible appeal to the Permanent Court of International Justice at The Hague. The starting point of this method is thoroughly individualistic. Its aim is essentially to guarantee through international supervision

equality in civic and political rights to the individual members of the minorities even in opposition to the parliament and the administration. The tendency is here to transform political conflicts into juridical procedures upon the basis of international law and in this way to check the irredentism of the racial groups. The protective procedure is of a schematic and general nature; it clings, however, to positive treaties and declarations. But on the one hand it does not go deeply enough into the principles upon which the relation between state and nation is based, and on the other hand it fails to do justice to the concrete relations obtaining between individual states and national groups. This method has proved to be entirely ineffective for righting wrongs committed by states. Its chief significance is prophylactic; its function probably lies in the prevention of further acts of violence, whose extent naturally cannot be estimated with exactness. As shown by the examples of Italy and France it has scarcely any effect upon the domestic policies of those states which although they are members of the League of Nations and partners in protective treaties are not formally obliged to protect minorities.

More promising and effective are the attempts made by individual states, such as Prussia, Estonia, Czechoslovakia and others, to regulate the question of minorities legally and within the sphere of domestic politics. In these instances the state has exhibited a more tolerant and just attitude toward its minorities, and the state legislature and administration have recognized and stimulated the latter's autonomous institutions. Whether and to what extent these attempts will check irredentist developments cannot yet be foreseen. The future of irredentism will depend upon how far the consciousness of the age will be affected by the principle of nationality and consequently by the ideal of a national state in which national and political frontiers coincide. As long as the belief is current that the function of the state is to enable a particular ethnic individuality to assert itself and to exercise power, it inevitably follows that the state territory must be completed in accordance with ethnic frontiers and that all ethnically homogeneous territories must be united in one political whole.

MAX HILDEBERT BOEHM

See: NATIONALISM; MINORITIES, NATIONAL; COMITADJ, AUTONOMY; BOUNDARIES.

Consult: Boehm, Max H., *Europa irredenta* (Berlin 1923), and *Das eigenständige Volk* (Göttingen 1932);

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IRRIGATION is the process of artificially supplying water for agriculture in regions where rainfall is deficient or lacking. From remote antiquity the peoples of the tropics have cultivated food and fiber crops by its aid, and many of their institutions have arisen in part from the cooperative nature of this undertaking. In the modern world irrigation has often been motivated by purposes other than the conservation of the food supply or the cultivation of industrial plants for local needs. In the United States and throughout large areas of the British dominions irrigation projects have been inaugurated upon territory of small or no population, with the aim of establishing in these regions communities of agricultural farmers. A nucleus of such farming families eventually becomes a township; other industries are attracted and the result is a commercial agricultural economy in which crops are grown for export, and transport and banking facilities soon appear. Irrigation thus aids in the settlement of a formerly barren region, frequently by emigrants from congested areas.

The modern irrigation works installed by the British in Egypt and by the French in northern Africa have as one of their objects the desire to assure the necessary food supply for the native peoples; of equal importance, however, is the wish to provide water for capitalistic enterprise. In Egypt the latter is concerned with cotton; in northern Africa with fruit, especially dates. In sparsely populated Mesopotamia native irrigation methods suffice for local needs, but the soil and temperature are preeminently suitable for cotton, a raw material in which the British Empire is deficient. At present in Mesopotamia several small irrigation projects are already in operation, although more ambitious schemes have been under consideration and in the future may become possible.

A few European countries practise some seasonal irrigation. A summer irrigation in the Po plain provides for rice and for the mulberry, which is cultivated for silkworms. Irrigation in the Roman Campagna now furnishes both good

pasture and forage for fattening livestock in winter and a summer harvest of fruit and is leading to the replacement of a temporary by a permanent population. The terrace and *huerta* gardening of Spain provides for oranges (of which there is a considerable export), other fruits and esparto grass as well as cereals for home consumption. Although irrigation is of long standing in Asiatic, it is in its infancy in European, Russia. The reorganization of agriculture under the Five-Year Plan embodies an elaborate program of irrigation for the wheat, forage and other crops in the Ukraine and the Caucasus. The dense populations of the Far East could not raise sufficient food without irrigation: in India it has largely banished famine; in China the system of multiple cropping and intertillage raises enormous harvests by utilizing field ditches for rice cultivation in water which through seepage irrigates the other crops grown upon the intervening banks.

The recovery of underground water by sinking wells early supported a little agriculture among tribes that were preponderantly pastoral. Surer results were obtained where rivers crossing arid territory could be dammed by a crude barrier of earth or stones, forming reservoirs from which simple channels might be led out to the fields. The corn and food crops of ancient Mexico were thus irrigated from mountain streams, and the early Mormon irrigation was of the same type. This method is still in use upon the Deccan of India and elsewhere in the East.

Taking advantage of the fact that inundation of riverine lands might be considerable when floods were heavy, the pharaohs of ancient Egypt elaborated the "basin," or "flood," system of irrigation. A longitudinal dike parallel to the bank of the river secured the left side of the valley from the exceptionally high floods that swept down it every eight or ten years. Shorter, transverse dikes stretched from the long dike to the Libyan hills, thus dividing the country into compartments or basins with an average area of 7000 acres. Where the valley was narrow these basins were not more than 2000 acres in size; where it was wide they averaged 20,000 acres. Groups of seven or eight basins were served by a feeding canal fitted with regulators, which led the turbid flood waters into one basin after another beginning at the lowest, the furthest from the intake on the Nile. The waters stood on the land for about forty or forty-five days and then returned to the subsiding Nile through breaches

in the embankment walls and through escape channels in the tail basins. Each flood deposited fertile alluvium, and the ground was ready for sowing in November. This process of reclamation was eventually repeated on the right side of the valley; and since the double longitudinal diking might cause inundations throughout Lower Egypt in years of exceptional flood, natural channels enlarged for the purpose diverted these waters to the Faiyum depression to form the so-called Lake Moeris. Similar channels took the excess back to the Nile when the flood season was over; but ultimately the river widened and built up its own trough, in which it remained. Thus Lake Moeris, now no longer required as a safety valve, has been reclaimed for agriculture.

The contemporaneous irrigation of Babylonia involved two rivers, each carrying about five times as much silt as the Nile. The floods occurred too late for winter and rather early for summer cultivation, so that Babylonia evolved what may be called the perennial system of irrigation, which made agriculture possible at practically all seasons. The salt deposit resulting from a temporary overflow of the Euphrates as well as the liability of the flooded Tigris to excessive inundation necessitated careful drainage. Powerful escapes took the Euphrates floods into two depressions northwest of Babylon, thus providing reservoirs for feeding the river when low. The Tigris had two large canals, one on each bank and more or less parallel to it. The more important left bank canal possessed three heads, so that when one was closed for desilting, the system was still in working order. The canals filled naturally in flood time; but when the river was low, sections were flooded with reserves stored behind huge storage dams of rubble or brickwork. Gigantic regulators for filling and emptying the canals and thousands of miles of subsidiary channels were part of this system, which resulted in flourishing cities and a phenomenal agricultural return.

A species of basin irrigation (more accurately called overflow irrigation) was a feature of the Ganges and Damodar deltas more than 3000 years ago. Shallow channels were constructed at right angles to the river in order to draw off the upper layers of the flood waters, where the silt was finest. Breaches in the canal walls, closed after use, supplied the cultivable tracts. Irrigation took place during the monsoon rains for the double purpose of manuring soil exhausted by rice crops and of combating malaria, because silted water destroys the mosquito. When the

Chola kings of Bengal conquered southern India they imposed this system on the country, where it is still in use although it has vanished from its original home.

The ancient form of irrigation in Ceylon was the tank, constructed for the irrigation of rice. The larger tanks occupied natural depressions, whose walls were heightened by earthworks. They were fed by canals drawing from reservoirs created in a river by means of barrages of masonry or brickwork, the more permanent of which were fitted with valves and sluice gates. The largest tanks covered from 4000 to 6000 acres, although the general magnitude was much less; the heavy constructional expenses were met by the royal exchequer. Similar tanks were built in Madras; two of these, one irrigating 3000 and the other 4000 acres, are still in working order although over eleven hundred years old. In peninsular India and Ceylon small tanks, constructed by the cooperative labor of the village community and generally filled by the monsoon run-off, have been in use since remote times.

The earliest monster irrigation project in China was the ingenious diking by which the Min River floods spread out laterally in numerous channels, carrying irrigation to the Red Basin of Szechwan. The scheme was planned and installed by two successive hereditary governors of Cheng-tu between 250 and 200 B.C. Extensively repaired in the thirteenth century, this great work still furnishes the major part of the irrigation in the Chengtu plain.

Stupendous engineering feats necessitated by adverse topography were a feature of the Inca irrigation. Massive masonry dams, cisterns carved in solid rock, canals and subterranean aqueducts lined with freestone slabs were the characteristics of these irrigation constructions effected by a people living in its stone age.

The "terrace" irrigation practised by the Moors in the Old World and the Amerinds in the New World deserves special mention. In this system water drawn from either mountain streams or reservoirs filled by rain or water lifts flows over successive terraces constructed on a hillside. Primitive harrowing or a low outer wall allows a small amount of water to remain after the sheet has passed. Terrace irrigation spread in the wake of the conquering Arabs westward across Africa and into Spain in the eighth century and eastward to India and the Far East, where it still flourishes. It is also highly developed in the intermontane valleys of the Andes ranges.

Generally speaking the king or the state working through him was responsible for the larger engineering constructions, while local boards of magnates, as in Egypt, or of peasants, as in Bengal, adjusted the individual amounts of water and settled disputes between users. In Egypt the law exercised a general control with regard to the dikes, while the basins and their canals were kept in order by local *corvée*. Slaves and captives were employed for the diking, for which local quarries supplied stone. The small state expenses were met by the land tax, and the water was otherwise free. The efficacy of the Mesopotamian irrigation depended upon the power wielded by the central authority and was greatest when one king held the whole of the Tigris-Euphrates trough. The labor of desilting the canals was so arduous that it could be undertaken only by royal *corvée*, and probably much of the Babylonian aggression arose from the need to obtain captives for this purpose. Townships and landowners along the course of the river dealt with local silt and drainage difficulties.

Apart from its aid to agriculture irrigation conferred other benefits. The mutual interest of the cultivators in the available water developed a spirit of association which went far in promoting common action for the attainment of a common aim. In the ancient world the irrigation empires were the most coherent and the strongest, as they were also the most advanced in the learning and science of the times. When irrigation produced surplus crops, a medium of exchange was provided leading to oversea trade and a cultural link with other lands. Egyptian grain was of special value to countries with fewer agricultural advantages, a factor which undoubtedly contributed to its many invasions. Particularly was this true of the conquest of the country by Caesar Augustus: with a failing Italian food supply the Egyptian fields were vital to the maintenance of the Roman Empire.

In modern times irrigation on the pioneer fringe has been a cooperative venture; the necessary dams and ditches have been constructed by the water users. The earliest of these pioneer enterprises was the Mormon irrigation in Utah, where there sprang up flourishing settlements based on an agriculture fed from the diverted waters of the mountain streams. These early experiments in Utah showed that harvests could be gathered from the by no means infertile soil of the far west; irrigation companies were formed for profit, with the result that the actual cultivators became mere purchasers of water rights. But

such schemes were never really successful, because settlement was slow and the original estimates of possible revenues for shareholders could not be realized; again, western states enacted laws rendering illegal the demand for the payment of a water service charge (over and above the original purchase price of the water right). Cooperative and commercial enterprises are still to be found, but irrigation has very generally entered upon a third phase, in which reclamation on a large scale and in the more difficult regions has become the concern of public authority. Such projects in the United States are carried out under the supervision of the federal Reclamation Bureau; similar bodies function in the Union of South Africa and the separate states of Australia and provinces of Canada.

Irrigation sometimes gives rise to problems of more than local significance. One of the most frequently recurring of these is the equitable use of a river supplying a number of jurisdictions. In the United States, for example, recourse to interstate compacts has been necessary; typical are the one governing the use of the waters of the South Platte River, entered into by Nebraska and Colorado, and the Colorado River compact, to which six southwestern states are parties. A similar problem arises when rivers suitable for irrigation cross countries under different governments. The state possessing the source waters may divert needed water downstream. Difficulties sometimes spring up when a river technically navigable becomes too shallow through excessive use of its waters for irrigation.

By 1930 some 200,000,000 acres throughout the world were under irrigation. In North America the United States led with 20,471,000 acres, in Mexico there were 5,700,000 acres, in Canada 400,000 acres. In South America, Argentina was the principal user of the method with 3,000,000 acres being watered by ditches, Chile had 2,458,000 acres and Peru 1,000,000 acres. In Europe, France led with 6,000,000 acres, Italy had 3,900,000 acres, Spain 3,500,000 acres and Portugal 1,200,000 acres. In Asia and Oceania, India had 55,800,000 acres artificially watered, China had 50,000,000 acres, Java had 8,350,000 acres, Asiatic Russia had 8,000,000 acres, Japan had 6,675,000 acres, French Indo-China had 3,470,000 acres, Siam had 1,750,000 acres, Mesopotamia had 1,500,000 acres, Australia had 1,000,000 acres, the Philippine Islands had 750,000 acres, Ceylon had 350,000 acres. In Africa, Egypt led with 6,000,000 acres, while Morocco

had 1,500,000 acres, South Africa 800,000 acres and Algeria 400,000 acres.

The value of irrigation may be considered under three heads: local needs, cash crops for export and the maintenance of the livestock industry. In the first category belongs most oasis irrigation. In Iran and Soviet Turkestan such irrigation depends upon glacier fed streams; and cereals, fruit and cotton crops (some of which are exported) are the main products. In general the Saharan oases are fed from underground water, although some depend on mountain streams. In Egypt, India and the Far East as well as in Spain, Italy and other countries of Europe irrigation is employed largely to fulfil domestic requirements. Terrace agriculture largely serves local needs, although at times it provides exports to neighboring mining centers and other nearby settlements. In the second category are the cereals, temperate fruits and cotton crops of the newly developed lands of America and the British dominions as well as the date crops of the recently created oases in northern Africa. Irrigation belonging to the third category may be used to promote good alpine grazing grounds and valley pastures, where at the appropriate season the natural grassland can be abundantly cropped or cut for winter forage. Such irrigated pastures are a feature of the pastoral economy of southern Europe and are also to be met with in the Netherlands. In other cases the irrigation is supplied to meadows created by the deliberate sowing of one or more forage grasses of special excellence. The marcite fields of the Po valley and the "made meadows" of the Provençal plains and a number of mountain valleys of Europe have revolutionized the pastoral life of these countries. The large crops of irrigated alfalfa and hay grasses raised in western North America, southern Australia and South Africa are utilized in fattening stock for the meat industry or in feeding dairy cattle.

The effects of government programs for irrigation have at times been very unexpected. In the Old World the chief aim was the securing of sufficient food for the native peoples, but the magnitude of the operations have made other developments possible. In Egypt water is now provided for the growing of cotton, and the natives sell their crops to the state domains or private companies. New storage dams are being projected and the existing irrigation area is likely to be considerably increased. In the French Sahara the creation of oases is winning over some of the nomads to an agricultural life and at the

same time provides centers of order which will assist in checking the depredations of the wandering tribesmen.

The advance of irrigation does not go on unchecked, nor is it without its drawbacks. The transformation of Mesopotamia is likely to be delayed by difficulties arising from sparse population, political unrest and the nomadic tendencies of a large part of the inhabitants. In the French colonies the natives persist in clinging to their primitive modes of agriculture and succeed in disregarding, sometimes quite effectively, the advantages brought by an increase of water and new transport facilities. Deficient drainage is a great menace wherever there is irrigation on a large scale. Underground accumulation of unused irrigation water may lead to waterlogging, which destroys crops and may even cause the formation of swamps. Such underground water is likely to bring up to the surface deposits of mineral matter, which form infertile salty tracts. A delicate situation arises when modern works assuring a perennial irrigation are imposed upon a densely populated country accustomed only to seasonal irrigation. The absence of fallow causes soil exhaustion which can be remedied only by expensive manuring, a condition which has manifested itself in Egypt. Moreover the increased production of cereals and fiber crops through the opening by irrigation of marginal and submarginal lands has already proved to be by no means wholly advantageous. These additional crops have merely succeeded in increasing large world carryovers and have depressed prices to such a point that since 1930 the growing of grains and industrial plants has, except where acreage has been drastically restricted, seemed on the whole commercially unprofitable.

E. H. CARRIER

*See:* AGRICULTURE; FOOD SUPPLY; LAND SETTLEMENT; RECLAMATION; FLOODS AND FLOOD CONTROL; AGRICULTURE, GOVERNMENT SERVICES FOR; WATER LAW; COMPACTS, INTERSTATE; DRY FARMING.

*Consult:* Carrier, E. H., *The Thirsty Earth* (London 1928), and *Water and Grass* (London 1932) ch. iii; Halbfass, Wilhelm, *Das Wasser im Wirtschaftsleben des Menschen* (Frankfort 1911) ch. iv; Willcocks, William, and Craig, J. I., *Egyptian Irrigation*, 2 vols. (3rd ed. London 1913); Willcocks, William, *The Restoration of the Ancient Irrigation Works on the Tigris* (Cairo 1903), and *Lectures on the Ancient System of Irrigation in Bengal* (Calcutta 1930); Deakin, Alfred, *Irrigated India . . . and Ceylon* (London 1893); Bligh, W. G., "The Ancient Irrigation and Water-supply Tanks or Reservoirs of Ceylon" in *Engineering News*, vol. Ixix (1910) 297-303; Peet, Stephen D., "Prehistoric Irriga-

tion" in *American Antiquarian*, vol. xxi (1899) 285-308; Institut Colonial International, Brussels, *Les différents systèmes d'irrigation*, 4 vols. (Brussels 1906-09); Barois, Julien, *L'irrigation en Égypte*, 2 vols (Paris 1887), tr. by A. M. Miller as *Irrigation in Egypt*, United States, Congress, House of Representatives, 50th Cong., 2nd sess., Miscellaneous Documents, vol. ix (1888-89); Brunhes, J., *L'irrigation . . . dans la Péninsule ibérique et dans l'Afrique du Nord* (Paris 1902); Italy, Ministero dei Lavori Pubblici, Servizio Idrografico, *Le irrigazioni in Italia*, vol. i- (2nd ed. Rome 1930- ); Vlček, Antonín, *Budouct kolonie v Rusku* (Future colonies in Russia) (Prague 1928); Alexander, J. A., *The Life of George Chaffey* (Melbourne 1928); Smythe, William E., *The Conquest of Arid America* (New York 1905); Hess, Ralph H., "The Beginnings of Irrigation in the United States" in *Journal of Political Economy*, vol. xx (1912) 807-33; Brough, C. H., *Irrigation in Utah*, Johns Hopkins University, Studies in Historical and Political Science, extra vol. xix (Baltimore 1898).

ISABELLA OF CASTILE. See FERDINAND V AND ISABELLA.

ISELIN, ISAAK (1728-82), Swiss historian and economist. Iselin's works are all animated by the optimistic eudaemonism of the Enlightenment and the endeavor to trace the process whereby mankind developed from barbarism to higher perfection. As a disciple of Leibniz and Wolff he emphasized the predominance of reason. He protested against Rousseau's glorification of the natural man and looked for the stage of man's perfection not in the past but in the future. He classified historical eras into periods of youth, maturity and decay and considered the phase represented by maturity as the climax of development. Unlike Herder he denied any cultural values to the non-western peoples and to the whole period of the Middle Ages. He gave particular emphasis to the cultural significance of the ancient world.

In his theory of the state Iselin opposed the contract theory and called it chimerical and a fiction. His theory was closer to that of the *consensus tacitus* which served as a transition form from the social contract theory to the organic concept of the state. The motives which led to the rise of the state were the gregarious instinct, the habit of obedience and the desire to command. In accord with his ideas of progress and perfectibility he was also a disciple of Basedow in his interest in education and philanthropy.

In his economic views Iselin was influenced by the physiocrats. Like them he distinguished between the actual and the normative ideal orders. From the standpoint of a theory of imputation he also favored the physiocratic classi-

fication of individuals as advantageous for a distinct evaluation of the economic value of the several classes. This, however, was but an abstracting process, and a certain balance of classes and occupations was necessary as a guaranty of a well functioning economic society. Iselin also favored an international economic balance of power, in the sense of an international division of labor, in order that the process of economic circulation be not impeded. Although from the purely economic standpoint "net proceeds" are attributed to the landowner alone, a part thereof in the form of taxes belongs to the state which assures the owner peaceful possession. Iselin opposed all forms of constraint and considered freedom of commerce and trade as the best regulator of prices. He also advocated the classic principle of preestablished harmony according to which the happiness of the individual is closely bound up with that of his fellow men.

LOUISE SOMMER

*Chief works:* *Philosophische und patriotische Träume eines Menschenfreundes* (Zurich 1759, 3rd ed. 1760); *Geschichte der Menschheit*, 2 vols. (Leipzig 1764, new ed. Karlsruhe 1791); *Versuch über die gesellige Ordnung* (Basel 1772); *Vermischte Schriften*, 2 vols. (Zurich 1770); *Pädagogische Schriften*, ed. by Hugo Goring (Langensalza 1882).

*Consult:* Miaskowski, A. von, *Isaak Iselin*, *Baseler Beiträge zur vaterländischen Geschichte*, vol. x (Basel 1875); Hagenbring, Paul, "Iselins Geschichtssphilosophie" in *Historische Vierteljahrschrift*, vol. xvii (1914-15) 465-88; Zinck, P. A., *Isaak Iselin als Pädagog* (Leipzig 1900); Stern, A., "Über Isaak Iselins Geschichte der Menschheit" in *Zeitschrift für schweizerische Geschichte*, vol. x (1930) 205-53.

ISIDORE OF SEVILLE (Isidorus Hispaniensis) (c. 560-636), mediaeval Spanish encyclopaedist. Isidore was both the last of the early Christian philosophers, the direct descendant of Boethius and Cassiodorus, and the forerunner of the scholastics, the pioneer of the great revival of learning in the thirteenth century. He is the originator of the encyclopaedia, the first to compile a *summa* of all available knowledge. The greatest of his works, the *Etymologiarum sive originum* (ed. by W. M. Lindsay, 2 vols., Oxford 1911), with its twenty books subdivided into more than three hundred chapters, is a compendium of seventh century scholarship and a library of information. Isidore drew freely from the classic Latin writers, from St. Augustine and St. Jerome and from Boethius, Gregory the Great and the Latin fathers of the Christian church. His work enjoyed a wide popularity among students throughout the early Middle

Agas and was translated into the vernacular not only of his native land but of other European countries. In the progress of learning the influence of Isidore is discerned in shaping the form of knowledge and directing the mind to universals rather than to special subjects. He anticipated the work of Peter Lombard, Albertus Magnus and Thomas Aquinas. All that could be saved of Greek and Latin culture in the break up of the Roman Empire was carefully guarded by Isidore and he is credited, perhaps justly, with introducing the writings of Aristotle to the west.

In Spain as archbishop of Seville, Isidore was conspicuously an instrument of reconciliation in fusing the ancient civilization of Rome with the Visigothic elements. No less was he an active force in the education of the clergy. The Fourth National Council of Toledo (633-34), held during Isidore's archepiscopate, ordered the establishment of seminaries for clerical students—a reform in the standard of learning that had to wait for the Council of Trent before it was generally enjoined. Isidore's educational policy also required that Hebrew and Greek must be taught and fresh incentive given to Biblical studies.

JOSEPH CLAYTON

*Works: Opera omnia* in Migne, J. P., *Patrologia latina*, vols. lxxxi-lxxxiv (Paris 1862). Isidore's historical works have been edited by Theodor Mommsen in the *Monumenta Germaniae historica*, *Auctorum Antiquissimorum*, vol. xi (Berlin 1894) p. 241-506.

*Consult: Brehaut, Ernest, An Encyclopedist of the Dark Ages: Isidore of Seville*, Columbia University, *Studies in History, Economics and Public Law*, whole no. cxx (New York 1912); Schmekel, August, *Isidorus von Sevilla* (Berlin 1914).

ISLAM is the name of the youngest of the great world religions. The word itself means submission—that is, submission of believers to Allah and his prophet—and may denote the primitive preaching of Mohammed (*q.v.*) as well as the sensibly different later orthodox system or the folk religion of the modern Moslems. Islam is, however, more than a religion; it represents also a political and juristic theory which has been at least partially realized in one of the greatest oriental world empires and in numerous separate states extending down to the Moslem states of the present day. Finally, Islam signifies a cultural whole, encompassing religion and state, since the concept of Islamic state and the tenets of Islamic civilization derive their authority solely from their foundation in religion. The ideal of Islam is the rule of religion over all of life; as a religion it is at the same time the

*Weltanschauung* and way of life of its believers. In its foundations and in numerous features Islamic culture is closely related to the Christian culture of the Middle Ages and is derived from the same roots.

Islam arose in Arabia, where in Mohammed's time paganism had ceased to exercise any spiritual sway and where pagan rites were practised as a part of tradition or, as in the annual pilgrimage to Mecca and the observance of the holy months, chiefly because of their economic value. Even before the days of Mohammed some Arabs, the so-called Hanifs, had turned from paganism but without embracing either Judaism or Christianity. The evolution of monotheistic tendencies was aided by the influence of these two religions, both of which had numerous adherents in Arabia. Jews, chiefly converts of Arab descent, dwelt in compact groups in the oases of western Arabia. Christianity had spread, although as a rule superficially, toward the north and east from the Christian-Arab buffer states set up by the Roman and Persian empires. In the period immediately preceding Mohammed, Allah had begun to be recognized among the mass of individual gods as a supreme deity of universal character, so that Mohammed's preaching aroused contradiction not because of his cult of Allah but because of his insistence on the exclusive worship of Allah. Thus Mohammed could restrict himself to Islamizing the cult of Mecca, while retaining its essential ancient forms; that is, the cult of the Caaba and the adjacent shrines and the so-called *hajj* of Arafat, which together form the principal elements of the Islamic pilgrimage. From its very beginnings in the seventh century Islam was not a desert cult but a typically civilized or urban religion, which was only externally influenced by Arab paganism. It was, however, profoundly affected by Arab society, especially by its dominant tribal spirit strongly bound in tradition.

The main religious tenets of Islam were derived from Judaism and heretical gnostic Christianity, although it cannot be assumed that Mohammed possessed any exact knowledge of either religion. He felt himself called upon, however, to proclaim to the Arabs the divine revelation which the Jewish and Christian peoples had already received through Moses and Jesus; and the Koran is the Arabic edition of the earlier Scriptures, with which it agrees in content. When the Jews refused to acknowledge him as a prophet, Mohammed became convinced that their Scriptures had been falsified. He accord-



ingly invoked Abraham against them and proposed to restore and propagate Hanifism, Abraham's uncorrupted religion; the institutions retained from Arab paganism were also ascribed to the religion of Abraham. These steps marked a definite break with Judaism and Christianity. Mohammed ceased to regard Islam as a form of revelation ranking equally with them and proclaimed it the only true religion.

The starting point of Mohammed's teachings is the idea of the day of judgment, which he at first considered imminent and which was to put an end to the materialistic activities of the inhabitants of Mecca if they did not do penance; the judge is Allah himself. There results from this eschatology a belief in monotheism. Man is a slave in his relationship to Allah, who is omnipotent but kind. In the Koran predestination and free will are emphasized alternately, depending upon the situation; this gave rise later to the problem of the freedom of the will. Within the prophethood of the Koran, which is related to the gnostic concept of the cyclical renewal of unitary original revelation, there appears a special form of Christology in content resembling the apocryphal Gospels, which is basically Docetic and which denies the divinity of Jesus. For Mohammed the conviction of his prophetic mission was at first simply the presupposition of his teachings, but later it developed into a fundamental dogma. He considered the essential elements of a revealed religion the possession of a holy scripture and the use of that scripture in divine services. From this doctrine is derived the significance of the Koran, whose authenticity and completeness are unquestioned. The Koran is Allah's uncreated word in the sense that in its actual form, in its Arabic language, it is supposed to be the identical reproduction of the celestial original. The use of the Arabic tongue in the Koran is important in that it determines the essentially Arabic coloring of Islam. As a source of religious doctrine it is supplemented by the way of life (Sunna) of the prophet, as laid down in the tradition (Hadith). The role of the Sunna is best illustrated by the fact that in Islam Sunnite is synonymous with orthodox. Mohammed's religious authority, even beyond the statements of the Koran, could not be questioned, and soon after his death people began to cite him as a model. In the meanwhile religious institutions and doctrines continued to develop under Jewish, Christian and Persian influences. If Islam was to maintain its position as an independent

religion it had no choice but to pretend that these elements were traditions emanating from the prophet himself. Finally, there was no better way of establishing disputed points of view than to ascribe them to the words of Mohammed. Thus everything absorbed by Islam during the course of its first few centuries had to be stamped by a gigantic fiction as the Sunna of the prophet and put into the form of the Hadith, as a result of which the true kernel of tradition was almost entirely concealed. In the ninth century canonical collections were made from the huge mass of orally transmitted traditions.

Originally Islamic dogmatics not only served as apologetics toward non-Muslims but were also directed against the literalness of the old fashioned orthodoxy. Questions of dogma were raised also in connection with political issues. The first theological school, which dates from the eighth century, was that of the so-called Motazilites, whose endeavors centered about a number of detailed problems. In part these were of a purely dogmatic nature—questions concerning the unity of God, the uncreated nature of the word of God and the freedom of the will—and their treatment revealed the influence of dogmatic discussions among Christians. Other problems, such as the attitude toward authority and the consequences of grave sins, were of political importance. The problem of the freedom of the will and semipolitical questions had been treated in a similar fashion even earlier by the schools of the so-called Quadarites and Murjiites, but Islamic theology did not attain full development until the tenth century, when the intellectual labors of the Motazilites were reconciled with traditional orthodoxy through a refined dialectical technique of Greek origin. By the eleventh century Islam had attained in all its essentials the definitive form which was to determine its future course. The orthodox system had been developed and, although evolution did not cease entirely, an increasing degree of rigidity and stagnation became evident in intellectual life. The development attained at that time was generally regarded as both elemental and final; all innovations were looked upon as abhorrent.

The legalism and rigidity which characterized orthodox Islamic doctrine led at an early period to a reaction in the direction of mysticism. The classical development of mysticism (Sufism), which took place principally during the ninth century, represents the infiltration into Islam of the Christian-gnostic type of piety with its

characteristic ascetic features, retirement from the world and the love of God, which lead to a renunciation of worldly goods and activities. Three principal trends were evident in its later evolution: first, there is a striving for mystical union through the renunciation of personality and through ecstasy; secondly, there is the desire for individual salvation, which leads to an esotericism of the holy and to an easy disregard of the law intended for the masses of the people; and, finally, there is the association with the philosophy of late antiquity, as a result of which mysticism becomes gnostic. The reconciliation of moderate mysticism with orthodox dogma and law was effected by al-Ghazzālī (1058-1111), whose influence has persisted down to the present day. Non-orthodox mysticism tended toward excesses and exaggeration. In the twelfth century arose the religious orders which popularized mysticism. They were the heirs of the worship associations of late antiquity and together with the veneration of saints give popular Islam its local color.

At the opposite pole from mysticism there existed a traditional school that was dissatisfied even with the orthodox doctrine; this school proposed in the name of a rigid concept of the Sunna to restore Islam to its early purity—that is, to the teachings of the prophet and the practices of his associates—not of course with any historical accuracy but as they appeared in the embellishments of tradition. A vigorous advocate of this school, ibn-Taymiyya (1263-1328), thundered against the formulae of dogma and the teachings of mysticism as well as against the worship of the prophet and the saints, which he denounced as a departure from monotheism. His doctrine was taken up by the religious-political movement of the Wahhabites.

In addition to these general religious tendencies, which in the course of time have transformed Islam, there arose numerous sects which from an early period threatened its spiritual and political unity. They were impelled, as was natural enough in a theocracy, by religious-political motives. The first sect was that of the Kharijites (secessionists), which developed soon after the death of Mohammed and which demanded the free election of the most worthy man as caliph regardless of whether or not he belonged to the tribe of the Quraysh, Mohammed's tribe, and which also insisted on the rights of the community continually to check the leader and to depose him if he violated his obligations. Like all Islamic sects it broke up into

several separate branches, whose rebellions continued to give the state serious concern. For a time the Kharijites dominated north Africa and established communities of their own; today their scant survivors, the Ibadites, live in north Africa, Oman and Zanzibar.

At the opposite pole from the democratic Kharijites there was the legitimist Shi'a, the "party" of 'Ali, the son-in-law of the prophet, which included all degrees of 'Ali veneration, ranging from an almost orthodox esteem to an un-Islamic idolatry. At an early date the opinion began to prevail among the adherents of 'Ali that 'Ali, as the son-in-law of the prophet, was alone entitled to the caliphate; this was to become the fundamental Shiite dogma and to separate the Shiites from Sunnite Islam. The misfortunes of 'Ali and his descendants, which were largely of their own making, merely increased the veneration for the "family of the prophet." Among the countless Shiite groups the very moderate Zaidites, who are just at the boundary of orthodoxy, represent the old Arabic Shi'a. They acknowledge the caliphate of the first three caliphs and restrict subsequent caliphates to 'Ali and his descendants, but they repudiate the more extreme imam theory. They have persisted in southern Arabia since the ninth century. Outside Arabia the Shiites have become a rallying point for all revolutionary and heterodox tendencies among the Islamic peoples. Their fundamental doctrine is the imam theory. The first imam, as they prefer to call the leader of the community, was 'Ali, named by the prophet himself but deprived of his rights by the first three caliphs. The imamate is handed down to his descendants, and the problem of the line of this succession has given rise to numerous party splits. The imams are without sin and infallible and, as the bearers of a special inspiration, the authoritative interpreters of the divine will. The Sunna of the imams takes the place of the Sunna of the prophet's associates, who sinned against 'Ali.

As opposed to Sunnism, which is governed by universal agreement, Shiism represents an authoritarian church. Persecutions limited the Shi'a chiefly to secret propaganda and gave it an air of martyrdom. The concept of the suffering of the imam and of the salvation of the faithful thus achieved assumed a dominant role. After the failure of all the Shiite rebellions there arose the conviction that the last imam had vanished in a miraculous manner and that he awaits the time when he will return as the

Mahdi, "he who is guided aright" to restore order in Islam. The split between the "Twelvers," or Imamites, who have the largest number of adherents, chiefly in Persia, Iraq and India, and the "Seveners," or Ismaelites, was the chief break in the ranks of the Shiites; they are differentiated by the number of imams whom they acknowledge. The Seveners champion the doctrine that the Mahdi, as the last of the prophets, carries on and completes the work of Mohammed; in conflict with this doctrine stands the Islamic conviction of the ultimate nature of Mohammed's mission. The Assassins and the Bohras as well as the Khojas, who still exist in India under the Agha Khān, are branches of the Seveners. Other Shiite sects, which are so extreme and which diverge so far from common doctrine that they can scarcely be reckoned as part of Islam, are the Druses; the Nusairites, or Alawites; and the Ali-ilahis.

Although the sectarian movements were not direct expressions of national traits they were nevertheless the forms in which national or economic opposition was frequently expressed. Among the Persians this opposition was expressed chiefly in Shiitism, while among the Berbers of north Africa it took on entirely different forms. The spread of Kharijite ideas as well as the success of the Shiite Idrisites and the growth of Almoravide and Almohade movements were considerably influenced by Berber reactions.

From the Shiites, who first acquired a Messiah, the concept of the Mahdi has been taken over in a modified form by the Sunnites. For them he is simply a descendant of Mohammed, who will fulfil the ideal of the caliphate at the end of time and carry on the tradition of the rightly guided caliphs. The figure of the Mahdi has gradually passed from the realm of politics to that of eschatology; nevertheless, the history of Islam is full of Shiite and orthodox Mahdi rebellions. In its expectation of the Mahdi orthodox theory has expressed most vigorously its condemnation of the entire political history of Islam since the first four caliphs. But the repudiation of any state not entirely dominated by religion was accompanied by the most far reaching toleration in practise. This departure developed under the constraint of actual conditions, particularly in the political field, and was nourished by historical pessimism and veneration for the inscrutable will of Allah. Thus one is expressly commanded to obey any ruler, even if he obtains and exercises power illegally.

The majority of Moslems have for centuries

considered the orthodox system and still regard it today as the only legitimate form of Islam. It embraces the entire religious doctrine of Islam and is the expression of both the religious consciousness of the Islamic community and its "catholic instinct." Even though certain views and customs were initially rejected with violence, once they had infiltrated a considerable section of the community they were acknowledged without difficulty as orthodox. Thus a person who held that an expression of the Islamic spirit which the convictions of the community had stamped as orthodox was inadmissible would himself be guilty of a breach of orthodoxy. The content of orthodoxy is identical with that of the universal agreement (*ijmā'*), which is considered infallible and upon which not only Islamic law but the entire Islamic religion is based. Its exponents are the theologians of every age, for Islam has no councils or other organs to establish the *ijmā'*. Its role is retrospective and confirmative; the *ijmā'* serves to legitimize innovations although it does not introduce them; it tolerates a certain evolution of Islam but at the same time keeps it within definite limits. Thus it has recognized as orthodox both moderate mysticism and the veneration of the prophet and saints. As the expression of the consciousness of the community the concept of orthodoxy is subject to fluctuations and cannot be delimited logically. The fundamental doctrines, however, are anchored in the community consciousness with particular firmness, even though they have never been officially defined.

The essential dogma of Islam is belief in the absolute unity of Allah, the creator of the world, who neither begot nor was begotten and whom nothing resembles. Allah causes all the actions of men as well as every happening in the world according to his eternal predestination. At the same time men are capable of free actions, for which they are rewarded or punished. Among the prophets accredited by miracles the last and most eminent was Mohammed; the others were Adam, Abraham, Moses, David and Jesus. In addition to the prophets there are the saints. The theoretical compromise by which orthodox Islam acknowledged the worship of saints, which was originally quite foreign to Islam and which came from the preexisting folk religion, was due to the religious needs of the masses of the people. Such a compromise was possible only after the figure of Mohammed, in contradiction to the Koran, had become en-

dowed with superhuman attributes. This process began at a very early date and was furthered by mysticism and by the popular belief in miracles. Since then the prophet has stood at the head of all the saints. Magic and amulets, which have religious sanction, form an important element of the popular world of ideas. The principal signs of the day of judgment are the appearance of the Antichrist, of the Mahdi and the return of Jesus. The day of judgment, with the prophet interceding for the members of his congregation, as well as paradise and hell are described in detail. The believer who commits grave sins does not necessarily become an infidel, and while unbelief is punished by eternal hell, heinous sinners who are believers will not remain in hell forever.

The chief religious commandments, the so-called "pillars of Islam," are five in number: the profession of faith (*shahāda*), the ritual prayer (*ṣalāt*), fasting (*ṣawm*), the payment of the alms tax (*ṣakāt*) and the pilgrimage (*hajj*). One becomes a Moslem by reciting the profession of the faith: "There is no god but Allah, Mohammed is the apostle of Allah." Circumcision although generally practised is not obligatory. The faith consists in belief and profession of the creed. Islam is decidedly a religion of laws and on the whole compliance with commandments is emphasized rather than "faith." The ritual prayer as distinct from the individual prayer has become the chief outward characteristic of the Moslem. It consists of movements of the body, recitations of the Koran and religious phrases and must be performed five times a day in the direction of the Caaba in Mecca. On Friday the midday *ṣalāt* takes place as a communal service under the leadership of a president (imam), who reads two sermons. Except for this, Friday is a day of work like any other. Fasting is obligatory from dawn to sunset during the month of Ramadan and involves complete abstinence from food, drink, perfume, tobacco and sexual intercourse. The alms tax, a sort of capital tax in kind, is levied once a year and its proceeds are supposed to be employed only for certain charitable purposes. It developed during Mohammed's lifetime from the earlier duty of giving alms and is a church and poor tax rather than a state tax in the western sense of the term. In addition private charity is warmly recommended and widely practised. Every adult Moslem is obligated to make a pilgrimage to Mecca once during his lifetime if he is able to do so. The duty to carry on the jihad, the holy war against unbelievers, was almost

accepted as a sixth pillar and has a wide popular appeal to the present day. It is based on the assumption that the relationship of the Islamic community to all non-Islamic communities is one of war, which may be interrupted by an armistice solely for reasons of momentary advantage and which ends only with Islam's subjugation of the entire world. As a reaction against the dominance of the spirit of battle in Islam's early days there was later developed the doctrine of the "great holy war," consisting of the struggle against one's own passions.

Islam has no clergy, no church organization and no liturgy in the true sense of the term. The theologians are merely those who know the divine law; they do not compose a real clerical caste. Nevertheless, they possess considerable influence, because the ordinary Moslem, even though it is impossible for him to live in accordance with the law, expresses his respect for it by the deference he shows its representatives. Orthodoxy moreover disputes the necessity of guiding the individual soul and dislikes the activity of the Sufite sheiks, who play the roles of spiritual directors; nor can Islam acknowledge any dispensation of divine mercy through men.

Although like mediaeval Christianity Islam is a religion of the hereafter and as such has an ascetic element, it has not been able to suppress a characteristic elemental love of the world. The latter appears in the rejection of monasticism, in the natural respect for marriage and in the positive attitude toward trade and worldly goods. But in the main a spirit of renunciation prevails and is indicated by the warnings against woman, the prohibition of nudity, the repudiation of splendid buildings except as houses of worship, an economic ethics based upon religion, the condemnation of speculation in commodities and the praise of manual labor and of poverty. Other religious prescriptions are the frequently violated prohibitions of music and the portrayal of living beings and the absolute prohibition of wine and pork. The obligations to live simply and continently, to direct all activity with a view only to God and to bear up under misfortune arise from the feeling that one is a mere visitor in this world. The widespread fatalism of the Orient, however, is not based upon religion but is a matter of education and of temperament. The consciousness that all men are slaves of Allah is of great social importance, as is the strong feeling of religious brotherhood. Outwardly this corre-

sponds to a rigid separatism and a pronounced religious pride.

The political character which has marked Islam down to the present day is largely dependent upon the fact that Mohammed was not merely a prophet but also from the time of his migration from Mecca to Medina the undisputed secular leader of his congregation. During his Mecca period the spread of Islam as a religion was due solely to the prophet's religious energy and to the conviction of his associates. But during his Medina period emphasis was placed less upon conversion to the religion of Allah than upon submission to his prophet. Numerous conversions of individuals and even more so the conversion of entire tribes were of a political nature. With the spread of the religion of Islam Medina's hegemony was extended. This political structure upset the Arab tribal units by tending to make the acknowledgment of the prophet rather than membership in the tribe the distinctive criterion. Nevertheless, tribal feeling remained very strong and it was only Mohammed's personality that held the community together. The chieftains considered themselves bound only to Mohammed and after his death both the state and the religion were threatened with dissolution. Thereupon certain influential associates of the prophet succeeded in effecting the maintenance of the monarchical principle and under it one of them was chosen the first caliph; that is, the successor to Mohammed in all the latter's functions except the specifically prophetic. The political leaders succeeded in focusing the lust of the various tribes for booty upon a common goal, the holy war for the spread of Islam. The extensive development of the doctrine of the jihad at an early period indicates that the spirit of battle was fostered at the expense of everything else.

The expansion of the Islamic state cannot, however, be attributed to religious enthusiasm but must be explained rather in terms of the great migrations of peoples who time and again spread from Arabia to the surrounding civilized countries. This was the last of such migrations. Because of economic and political conditions in Arabia the tribes had been in a state of unrest for centuries before the advent of Mohammed. Islam united them. The religion made possible the political organization of Medina, so that a state grew out of a congregation. Later, however, it was the state and not the congregation that employed the Arab migration, which had begun independently of it, for its own political

aims. The surprising success of the Arabs is explained by the combination of a program which unified the nation, the will to power of a young state led by eminent men and conditions in the Persian and Byzantine empires, which practically invited conquest. The soldiers were stimulated by their share of the booty, four fifths of which was divided among them.

The thirty-year reign of the four first caliphs, abu-Bekr, Omar, Osman and 'Ali, all associates of the prophet and members of his tribe, was later looked upon as the golden age of Islam. It marked the first great stage of the expansion of the Arab-Islamic state, which took place under Omar and Osman and during which Syria, Iraq, Persia and Egypt were conquered. But already tribal and personal dissensions were making themselves felt. Disturbances under the reign of Osman resulted in the assassination of the caliph. The new caliph, 'Ali, was engaged in continuous battle with his opponents, the most formidable of whom was Mu'awiya, a relative of Osman, who claimed the caliphate himself, but before the struggle against Mu'awiya had been decided 'Ali was assassinated and Mu'awiya obtained general recognition as the first of the Ommiad caliphs.

Under the Ommiads, during the second stage of Arab-Islamic expansion, Armenia, Transoxiana, Afghanistan and the Indus area were subjugated in the East and north Africa and Spain in the West. As a result large areas of the Christian world came under Islamic rule. Their Islamization and that of other conquered territories did not, however, keep pace with their subjugation. As long as Islam remained confined to Arabia, the overwhelming majority of the adherents of the new state accepted its religion no matter how superficially. But as soon as the civilized countries of the Near East and north Africa were conquered, the expansion of the Islamic state was sharply differentiated from that of the Islamic religion. With certain exceptions the Arabs did not want to convert the vanquished but desired rather to maintain themselves as an upper class with special economic privileges above the masses. The nationalist Arab factor tended to outweigh the universal religious factor and the Arabs did not attempt to press their religion upon the Near East at the point of the sword. Believers in scriptural religions who submitted to the conquering Arabs were given protection and retained the freedom to exercise their religion upon payment of tribute. At an early date the concept of privileged

religions based upon scriptures was extended beyond Judaism and Christianity to include practically all important beliefs with which Islam came in contact; only the extinct Arab paganism was excluded. The *dhimmi*, or non-Moslem subject, was a citizen with lesser rights, whose most important disability was that he was not privileged to appear as a witness in an Islamic court. The tribute (*jizya*) paid by the *dummi* and the *kharāj*, a tax on the conquered lands left in the possession of their former owners, became the chief source of income of the state Treasury. Pensions were paid from it to the fighting Moslems and their families, varying according to their station in the theocracy. Because religion and government were then essentially Arabic in character the conversion of non-Arabs was possible only by means of affiliation with the Arab tribes. Non-Arab Moslems inherited the position and the name (*mawla*) of the tribe's foreign associates. The spread of the Islamic religion within the Arab-Islamic empire signified the growth of the ruling class and a decrease in the number of tributary subjects, for the payment of tribute ceased with the acceptance of Islam. Hence Islamization was not even desired and was certainly not an end in itself. Nevertheless, the ruling class could not but exert an ever increasing attraction if the vanquished could rise to its level and merely by changing their religion insure for themselves considerable economic and social advantages. To forbid conversion was to contradict the religious tendency of Islam, and ultimately the idea of the universal religion overcame the national principle of a state which had originally been identical with this religion. During the closing period of the Ommiad empire an endeavor was made to reconcile increasing Islamization with this national principle, partly by means of a reform of taxation which greatly reduced the economic incentive to conversion.

Alidic propaganda, supported by other factors, such as the dissatisfaction of the *mawla*, finally led to the downfall of the Ommiads in 750. But it was not the Alides, the descendants of the prophet, but the Abbassides, their cousins, who succeeded to power as a result of the revolution. Using the Shiite propaganda for their own ends and carrying on intensive propaganda of their own they pushed the Alides aside and their victory marked the end of the Arab kingdom of Islam. A member of the destroyed dynasty succeeded in founding an independent kingdom in Spain, which later developed into the

caliphate of Cordova. Like the caliphate of the Abbassides it was orthodox in religion and was opposed to the latter only in the political field.

During the first century of the rule of the Abbasside dynasty the social differentiation based upon nationality vanished entirely. When the Arabs entered into closer contact and economic competition with the native populations, the latter proved themselves far superior both materially and intellectually. To this superiority the Arabs were able to oppose as their own distinction only their religion, which was therefore strongly emphasized. The government was characterized by oriental despotism with all its auxiliary manifestations, instead of by the Arab aristocratic form of rule. There was no longer a ruling people dominating the vanquished but one mass of slaves on the same footing under a master. With the completion of the process of social leveling the Arabic language and with it the religion spread at a faster rate. At bottom the Arabs had been but little interested in religion; the new converts or their descendants, who possessed quite different religious traditions, now began missionary work. With despotism there also entered the concept of a state church, which had been quite foreign to the Arabs despite the emphasis upon their own religious superiority. The conversion of the non-Moslems now lay in the interest of governmental authority, to which religion became a necessary prop. The rulers endeavored to obtain the support of the theologians, and the latter fired by religious zeal began to work intensively for conversion. As a result the caliph's empire was extensively Islamized.

In the unified near eastern state represented by the Ommiad-Abbasside caliphates there developed upon a Hellenistic basis an integrated civilization with Arabic and an increasing number of Asiatic traits showing the influence of all the various countries involved. Islam then permeated both state and civilization, impressing them with a unified religious stamp. At the same time Islam entered upon its close link with a definite ideal of the state and a culture that characterized its future, while in turn it underwent considerable changes as a result of the assimilation of the spiritual heritage of former religions. This occurred as much externally, through religious discussion with its resultant borrowings and its polemics, as it did inwardly, because the converts from other faiths simply continued within Islam their former religious life with its customs, interests and problems.

Now for the first time Islam became a combination of a religion and an ideal of a state and of a civilization; and despite all local peculiarities and political splits it formed a great spiritual unit reaching from the Atlantic Ocean to China. The religion did not create the state and the corresponding civilization, but Islam as a whole arose from the combination of these three factors. Later, when the state and the civilization decayed, their ideal based upon religion remained a part of Islamic doctrine.

After a century of brilliant splendor the Abbasside empire began to break up in a way that has been characteristic of all great Islamic states. The weakening of the centralized government led to the political autonomy of the provinces under practically independent rulers and dynasties. At the same time the latter endeavored to legitimize themselves by establishing a relationship of mutual recognition with the caliph; he invested them with the administration of the areas over which they ruled and in return he was acknowledged as overlord. Thus there arose the differentiation between the caliphate and the sultanate, which dominates all later Islamic history. Besides the Omniads in Spain it was principally the Fatimites in north Africa and Egypt who refused to recognize the supremacy of the Abbassides and set up in opposition a caliphate of their own, the most significant political expression of Seveners. The founders of the Fatimite dynasty were closely linked to the religious-social movement of the Karmatians, a movement which was stimulated by the contemporaneous slave rebellions and which temporarily developed a type of communist society. Like the Ismaelite movement, with which it was originally connected, it had political and social revolutionary aims, which its leaders endeavored to realize by means of a vast conspirative activity within a hierarchical organization, in which the subordinates were completely under the spiritual and moral rule of the master. Ultimately the Fatimite caliph al-Īlākīm claimed to be the incarnation of God Himself. Some twenty years before the rise of the Fatimites another Shiite state had arisen in Morocco with the establishment of the kingdom of the Idrisites.

In the eleventh century there was a reaction directed against the political dismemberment and the threatened religious dissolution of Sunnite Islam, and for a time religious and political unity were restored both in the east and in the west. In the west this unity was achieved

by Almoravides, who were soon succeeded by the Mahdist movement of Almohades. The latter in turn departed from pure orthodoxy in their very strict enforcement of monotheism and in the magnification of the Mahdi's attributes. In the east the reorganization of Sunnite Islam was the work of the Seljuks, who like the Abbassides were the chief exponents of the old Persian concept of the state with its official religiosity embodied in Islam. They parceled out most of Mesopotamia, Syria and Asia Minor in military fiefs, which toward the end of the twelfth century were practically independent. After the Seljuks had been greatly weakened by the First Crusade, their role as champions of Islamic orthodoxy was taken over by Saladin, who put an end to the Fatimite caliphate of Egypt, and his Ayubite dynasty. From Islam's point of view the crusades were a mere episode. Shortly thereafter the entire eastern Islamic world was deluged by the Mongol conquest, which came to a stop only at the frontier of Egypt and which destroyed the caliphate of Bagdad together with numerous smaller states. Sultan Baibars, the most eminent representative of the Mamelukes in Egypt, who had succeeded the Ayubites there, gave shelter to an alleged member of the caliph's house; and from that time the caliphate was practically only an office in the court of the Egyptian sultan, whose occupants exercised the function of granting their sovereigns a formal investiture. The hopes which the Christians centered in the Mongols were rendered vain by the latters' conversion to Islam, which penetrated the new Mongol states with unexpected rapidity.

Upon the ruins of one of the little Seljuk states which continued to exist in Asia Minor as Mongol dependencies the Ottoman state developed, struggling continuously against the Byzantines. Warriors' leagues established upon a religious basis played a dominant part in its foundation. It recovered with astonishing ease from the blow dealt it by the Sunnite Turk Timur (Tamerlane), who for a time united politically most of western Asia. About 1500 the Shiite Twelvers also found their political center, which has persisted down to the present, in the Alide family of the Safawides in Persia. The new dynasty, which reached its pinnacle a century later, energetically opposed the Ottomans. The intensification and embitterment of the conflict between the Sunnites and the Shiite Twelvers dates from this period of religious and political struggle. The third great Islamic em-

pire of modern times, that of the Moguls in India, which also arose about 1500, experienced a period of brilliant splendor during the sixteenth and seventeenth centuries, then declined steadily until its last shadow vanished in 1857. The Ottomans continued to spread in Europe and Asia and with the conquest of Egypt and the holy places gained undisputed predominance in Sunnite Islam. At the time of its greatest extent in the early sixteenth century and even later the Ottoman Empire restored the political and religious unity of Islam to a considerable degree and the claim of the Ottoman sultan, as the most powerful Islamic ruler, to the caliphate was widely acknowledged. Among the Ottomans Islam is characterized by the synthesis of strict orthodox dogma and a strongly mystical piety with a certain Shiite cast. The Ottoman advance made an even stronger impression upon Christendom than had the initial expansion of Islam. But the serious even though essentially temporary losses of the Christian world resulted neither in the defeat of the modern occidental civilization, which had developed in the interval, nor in a decline of the Christian religion comparable to the Islamization of western Asia and north Africa.

Islam extended beyond its political boundaries mainly through trade channels as a result of its cultural superiority over primitive peoples. Both within and without the Islamic state the spread of the new religion took place as a rule peacefully and naturally; conversions by force and persecutions, which are contrary to the spirit of Islam, were comparatively rare. The same factors account for the peaceful expansion of Islam as for its strong hold over those whom it has once converted. Because of the absence of a clergy and of any ecclesiastical organization the feeling of responsibility rests upon the individual believer. Accordingly he tends to give his religion an important place in his life and is unusually energetic in his endeavors to spread it. Not only the religious teachers, who devoted their lives to this task, but all classes of the Moslem population participated actively in the propaganda for their faith, particularly the merchants, who had many opportunities and who were not subject to the distrust with which primitive peoples often regard the foreigner and the professional missionary. Chief among the inherent qualities of Islam which have aided its successful expansion are the simplicity of its principal dogma of the unity of Allah and of his relation to the prophet Mo-

ammed and the rationalist nature of the entire doctrine. The eschatological factor, the strong emphasis upon the hereafter, and most of all the fearful threat of the punishment of eternal hell for unbelievers are also effective. Then there are the simple and definite religious obligations, among them the ritual prayer, which must be recited five times a day by the believer; and the pilgrimage, which represents an imposing and inspiring manifestation of Islamic unity. Another factor contributing to the strength of Islam is its ability to assimilate folk beliefs as well as its theoretically tolerant, syncretic attitude toward the earlier revealed religions. These tendencies have been aided by certain external circumstances: in most of its missionary fields Islam appeared as the religion of a ruling class, of a powerful state and of a fascinating civilization; it insured a rise to a higher social and cultural status and often attracted the more progressive elements of the population. The pious life of its believers, which becomes a permanent missionary message, and the virtues attendant upon it made a profound impression, even upon the Christians at the time of the crusades and the wars against the Turks. The various movements for religious reform in modern times have reenforced the missionary activity of Islam.

During the past fifty years there have been endeavors at reform through the further development of Islam. One of these was made by the Ahmadiya, founded in the 1830's and since become a separate sect. Its founder, Mirza Ghulām Ahmad, claimed to be a returned Jesus as well as the Mohammedan Mahdi; repudiating the holy war he addressed his preaching to Moslems, Christians and Hindus. The more moderate of the two schools which later developed from his doctrines had its seat at Lahore and devoted itself to intensive missionary work in India, in Moslem Africa and in Europe, where it gained adherents chiefly in England and Germany. Despite the endeavors to ally itself with Sunnite Islam it is rejected by practically all the schools. More important for the development within Islam has been the modernist movement.

In Asia the territory of the Moslem state was Islamized at a relatively early date; only later, with the rule of the Seljuks and Ottomans, did the religion penetrate Asia Minor as well. Large areas in India were added in the eleventh century. Islam had reached China even earlier, through Turkestan, Islamized from Transoxiana, and by the ocean route. The Mongol move-



ment resulted in larger gains in China. The Malay islands were Islamized from India and later directly from Arabia. Islam also gained adherents in the Philippine Islands. The northern coast of Africa was conquered at an early date and through trade Islam penetrated beyond the borders of the empire into north and central Africa, starting from Upper Egypt and Morocco and passing along the oasis routes of the Sahara. After about the ninth century this was supplemented by an Arab settlement and the Islamization of the Zanzibar coast as far as Madagascar. Islam also gained a foothold in western, southern and eastern Europe, but was completely driven out of Spain in the fifteenth century. The appearance of the Normans turned the tide in southern Italy and the Mediterranean islands, which had been conquered and Islamized from the African shores. In the east the Ottomans carried their religion as far as Hungary and Greece, but it gained a firm footing only in the Balkan Peninsula. In Russia it was spread chiefly through the Mongol movement; the Islamization of the Golden Horde was a great victory; the Kirghiz were converted to the Islamic faith in the eighteenth century by the Russian government, which regarded them as backward Moslems.

From the end of the seventeenth century the great Islamic empire of the Ottomans fought a losing battle with the west. During the nineteenth century the process was greatly accelerated, but until the beginning of the twentieth century the military and political defeats of Turkey in Europe resulted neither in a weakening of Turkey's position in the Islamic world nor in a reorientation of the religious-political forces within Islam. On the contrary, these defeats led to the promotion, particularly by Abdul-Hamid II, of a defensive movement known as pan-Islamism (*q.v.*), which was directed against Europe and which aimed at strengthening and expanding the traditional Islamic religious and political unity. The impact of the West tended, however, to create more particularistic nationalist movements, which after 1900 became popular and spread extensively among the peoples of the Near East. Among the Ottoman Turks nationalism temporarily took the form of pan-Turanism, a tendency toward union with racially allied Turkish peoples. As a consequence of the World War nationalist sentiments aided by foreign propaganda developed enormous strength. After the war the new Turkish government, although confined to Turkish

territory, carried nationalism to its logical conclusion and effected a complete break with the Islamic cultural past. Religion was eliminated from public life and was subordinated to the interests of the state. The sultanate was abolished in 1922; this was followed in 1924 by the abolition of the caliphate and in 1928 by the abolition of Islam as the state religion. The orders of dervishes were also suppressed. Among the Arabs, however, the nationalist movement, which led to the downfall of the Ottoman Empire, has entered into a union with Islam, conceived as a religious and spiritual force, while repudiating religious fanaticism. Arab nationalism is local in its nature and consists of Syrian, Iraq and other local movements; for the moment it has renounced political pan-Arab ambitions. The disappearance of the caliphate has furthered the idea of international religious congresses in Islam but not of a pan-Islamic movement in the proper sense. Thus the end of the political evolution of Islam is marked by the renunciation of the practicability of the political ideal; despite the political disintegration of the Islamic area and the abolition of the caliphate, however, a strong common feeling exists against European domination, although without any serious threat of a holy war.

At the present time the religious aspect of Islam has again become the most effective; the bonds between Mohammedans are based upon their common faith and the unity of their ideals. With the modernization of public education traditional theological training is declining, but a greater revival of actual religious activity is being manifested. The mark of real Islamic unity is the common acknowledgment of the Koran, which although losing some of its dominion is still venerated and upheld by the people. The movements of modernism and nationalism which have arisen under the influence of occidental ideas involve a new and profound change in the cultural environment of the Moslems affected by them. Under their influence the political and cultural elements of the Islamic ideal are beginning to be consciously abandoned and to be replaced by modern occidental ideas. Even the traditional forms of the religious ideal are being measured by critical standards. This retreat to the real religious domains of Islam, which to its advocates seems to be a return to what is original and basic, may revive its central religious forces, which are still energetic, and thus offset the losses sustained by Islam in the political and cultural fields.

A modernist wing has arisen, with its principal centers in India, Egypt and Turkey. Common to all of its tendencies is the realization that Islam has stood still for centuries and is in need of a renaissance. Opinions differ as to how this is to be brought about. Many nuances of opinion are represented: from an absolute lack of understanding of the spirit of the west to its complete adoption; from an almost Wahhabite traditionalism to the flat rejection of Islamic law; from the attribution of all modern achievements to the Koran and the Sunna, to a critical insight into the history of Islam. Behind these trends is the thought that the real Islam is not hostile to civilization but on the contrary looks with favor upon progress; that the true core of the religion must be freed from the human structure which has been superimposed upon it, and which is responsible for Islam's decline; and that Moslems are entitled to take an unfettered stand upon modern problems with a view to the common good. From this there follows the rejection of the orthodox system and the endeavor to reduce Islam to a core of religious-ethical truths. The tendency to base the interpretation of the Koran and of those traditions which are acknowledged as genuine upon modern ethical and social ideas usually leads to views which are historically incorrect. Even within the most narrow orthodox groups there is an unmistakable striving for a religious revival. The various currents, which in part overlap one another, are the expression of the present crisis in Islam. It is quite possible that Islam will be even further differentiated—through the formation of national churches rather than by the rise of sects. It is to be expected that the mass of the population will cling to its traditional forms, while modernism will continue to spread among the educated. But the advance of modernism will not mean any weakening of religious convictions and it is very unlikely that the present grave crisis, marked by the conflict with western ideas, will destroy Islam.

According to estimates made in 1929 Islam has about 246,000,000 adherents, of whom 64,000,000 are Indians, 51,000,000 Malays, 38,000,000 Arabized races including 12,000,000 pure Arabs, 34,000,000 Turks, 26,000,000 Iranians, 23,000,000 Negroes, 7,000,000 Chinese and 3,000,000 members of Balkan nationalities. Only about 50,000,000 are formally independent of western powers, including Egypt (12,800,000), Turkey (13,000,000), Persia (9,000,000), Afghanistan,

Arabia and China. From a study made in 1923 it appears that at that time more than 90,000,000 Moslems were under British, 39,000,000 under Dutch and 32,000,000 under French rule in colonies, protectorates or mandated territories. There are over 15,000,000 in Russia. The vast majority of Mohammedans inhabit Asia and Africa; in Europe they are confined to Russia and the Balkan Peninsula; while in Central and South America they total about 193,000, and in the United States, including the Philippines, about 598,000. Sunnites constitute 91 percent, or 223,000,000, of all Moslems, while 8 percent, or 22,000,000, are Shiites; of the latter 1,000,000 are Zaidites and 17,000,000 Twelver Imamites. There are about 1,500,000 Ibadites. At the present time the number of Moslems is increasing principally in the countries which have been or are now under European rule and is stationary in the rest of the world. There is no apparent expansion of Islam into new fields, but the decline noticeable in Central Africa, India and the Dutch East Indies is very slight. No reliable data are available on the situation of Islam in the Soviet Union. Islam still exerts attraction as a social force. The majority of the new converts come from the "colonial proletariat," who through Islamization obtain civil recognition and the consciousness of human dignity; for most Mohammedans do not look upon their community as merely a juridic unit but as the ecclesiastical and almost ontological reality of a society of supernatural origin.

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See: CALIPHATE, ISLAMIC LAW; HOLY PLACES; PILGRIMAGES; JIHAD; RILIGIOUS ORDERS; FEUDALISM, section on SARACEN and OTTOMAN; EMPIRE; PAN-ISLAMISM; PAN-TURANISM, GOVERNMENT, section on TURKEY; INDIAN QUESTION, EGYPTIAN PROBLEM, NEAR EASTERN PROBLEM; CRUSADES; GUILDS, section on ISLAMIC GUILDS.

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ISLAMIC LAW, called *Shar'ā*, embraces all of Allah's rules for the conduct of man. It is supposed, however, to govern only the external relations of the Moslem to his fellow men and to Allah as distinct from the individual's conscience and feeling of religious responsibility. Since Islam has been from its beginnings a political entity as well as a religion, its law is theoretically an infallible doctrine of moral obligations encompassing without limitation not only the entire religious and domestic life of believers in Islam but also their political and social activity. Alongside prescriptions governing religion and ritual duties it comprises equally authoritative rules of a juridical and political nature and provisions for matters of all kinds, such as legitimate and prohibited musical instruments, sexual intercourse, archers' matches and racing, the portrayal of living beings, clothing and adornment. Islamic law, which evolved historically as the result of the combination of several factors, is a col-

lection of precepts rather than a system based on broad general principles in the western sense; it demands that its adherents accept it as inscrutable wisdom without criticism. The chief tendency in its evolution was the religious evaluation of all the conditions of life; juridical considerations were secondary. The *Sharī'a* is a typical example of sacred law in a religion based upon prophetic scriptures and hence it is specifically jurists' law, a product of scholastic doctrine dominated by casuistry. It is of a non-formal character, since it does not aim at regulating conflicts of interests but at enforcing material postulates of religious ethics. Chiefly because of the close fundamental relationship between state and religion the theocratic link between religious-ritual duties, legal norms and moral admonitions could not be dissolved. The *Sharī'a* differs from the canon law of the Middle Ages in that the latter was much more rationally developed and much more formal from the juridical standpoint. In the canon law rational precepts under centralized authority took the place of interpretative evolution, while secular law stands alongside the canon law with a clear distinction between their spheres of authority.

The prophet Mohammed did not intend to establish a system to regulate the entire life of his adherents. On the contrary, during his lifetime there continued to exist as a matter of course the old Arabic customary law, which although based mainly on Semitic tribal law was considerably modified in the course of adaptation to different social conditions (e.g., the commercial law of Mecca, the agricultural law of oases like Medina) and contained numerous foreign elements of provincial Roman and perhaps Iraq and south Arabic origin. Mohammed confined himself to the issuance of various religious-ritual and military-political prescriptions and to the modification on religious grounds of the law on individual questions—inheritance, for example—as they arose. This was not always done through the Koran; important sections of religious legislation, such as the ritual of divine service, and various separate points were settled simply by the prophet's example and command. With his death this Koranic and extra-Koranic legislation ceased. The first few caliphs endeavored in agreement with the most distinguished associates of the prophet to direct the community as its founder desired; but they nevertheless considered themselves empowered to enact legislation upon their own authority and when advisable they even changed the decisions

of Mohammed. The relationship between the Islamic legislation and the customary law remained the same as before, even after the latter had been increasingly exposed to foreign influences as a result of the vast conquests. This was absolutely inevitable, for in the conquered territories with their more complex civilizations the law which the Arabs brought with them proved inadequate and frequently inapplicable. At the same time legal practise was being continually developed and modified by decisions of Moslem administrators and judges.

With the rise of the Ommiad dynasty and the transfer of the capital to Damascus the pious circles of the former capital, Medina, lost their influence upon the government and began to construct an ideal picture of what conditions should be in contrast with actual circumstances, trying to systematize the existing legal material and to infuse it with Islamic religious principles. It was this group which laid the foundations of Islamic jurisprudence (*fiqh*). To emphasize the authority of Medina they gave particular weight to the sayings and actions of their predecessors, Mohammed's associates, especially to majority decisions. This deference to majority opinion (*ijmā'*) favored the development of common doctrine and the elimination of isolated viewpoints. The results of this speculation were largely formulated into traditions and attributed to the prophet himself. In this process many new elements, especially those of Jewish origin, were again introduced. The beginning of Islamic law already reveals some of its characteristic features—its interpretative nature, the restriction of legislative activity to the prophet, the acknowledgment of Mohammed's real or fictitious practices (Sunna) embodied in the traditions as the principal source of law in addition to the Koran. The customary law was still recognized as fundamental.

The earliest theoretical disputations occurred during the first half of the eighth century over the role of the activity of the human mind (*ra'y*) in jurisprudence. They ended with acknowledging the *ra'y* in principle, the various schools of opinion giving the traditions more or less weight. Toward the middle of the eighth century special tendencies in jurisprudence were evident in the spiritual centers, Hejaz and Iraq. The chief representative of the Hejaz school, Mālik ibn-Anas (d. 795), acknowledged the Sunna of Medina as authoritative and devoted much care to determining the content of *ijmā'*, which he defined as the decisions of an almost

unanimous majority of the learned men of Medina. His doctrine represented the final Islamization of juridical material achieved at that time. Al-Shaybāni (d. 804) personified a corresponding stage of evolution for Iraq.

But the founder of Islamic jurisprudence as a Mohammedan science was al-Shāfi'i (d. 820), who did not limit his argumentation to special occasions or to single decisions but established definite principles. Moreover he investigated the points of departure and the methods of juristic argument themselves. He finally fixed the concept of the Sunna as meaning the prophet's own practises. He explained the *ijmā'* as the opinion of the majority of all Moslems and employed it as a source of law supplementary to the Koran and the Sunna. He also did much to advance the systematization of legal material but departed to some extent from the path of building up juristic concepts, in which a start had already been made. Rather he developed principles for the use of analogy (*qiyās*) and employed them extensively; analogy was in essence the old method of the *ra'y*, for which al-Shāfi'i endeavored to establish definite norms. He had but little success in this, however, and the methodology for employing the *qiyās* has remained indefinite. Al-Shāfi'i rejected a variant of the *ra'y*, the so-called *istihsān* (the departure from analogy upon grounds of equity and other grounds), because he regarded it as purely subjective.

After the great personal achievement of al-Shāfi'i had led to the establishment of a Shafiite school, the older principal trends of opinion were also forced to organize into definite schools. Typical representatives, such as abu-Ḥanifa (d. 767) in Iraq and Mālik in Hejaz, were acknowledged as the heads of these schools. Finally the old traditional wing, which viewed all speculative extension of religion with suspicion, also organized itself into a school of law named after ibn-Ḥanbal (d. 855). These are the four Sunnite schools which have persisted down to the present day; others which arose at the same time or later are now extinct. The non-Sunnite communities of Moslems have their own systems of *fiqh* which, however, have been strongly influenced by Sunnite jurisprudence; although based on different principles their peculiarities are no greater than those distinguishing one Sunnite school from another. The most important of these communities, the Shiites, recognize as their main source of law in addition to the Koran the Sunna of the prophet and of his successors, the imams, the chief among whom was the

caliph 'Ali. All religious doctrine is traced by means of traditions to their paramount authority. Only in the absence of the last imam—who is hidden—is the community guided by the learned interpreters of the law, the *mujtahids*. They are authorized to draw conclusions from the Koran and the Sunna by using the human reason (*'aql*); their unanimous opinion (*ijmā'*) is considered valid.

There are no fundamental differences between the orthodox schools. They all recognize the same principles of law and differ merely in their application; their juridical thinking and the results achieved are practically alike. They recognize each other as orthodox and as of equal authority; mutual intolerance has always been disapproved by their authoritative representatives. The school of the Zahirites, founded by Dā'ūd (d. 883), rejected all *qiyās*, acknowledged *ijmā'* only in so far as it had been reached by the prophet's associates and insisted upon being guided solely by the literal interpretation (*zāhir*) of the Koran and the Sunna. It did not, however, exert any permanent influence. The spread of the various schools was determined chiefly by secondary factors, such as the influence of their representatives, their geographical location and the attitudes of rulers. Today about 30,000,000 Moslems in Upper Egypt and the Sudan, north and central Africa are Malikite; this school also predominated in Moslem Spain. There are approximately 118,000,000 Hanafites in Turkey, central Asia and India and areas formerly under Ottoman rule. Lower Egypt, east Africa, western and southern Arabia, the coastal regions of India and the Dutch East Indies are Shafiite, embracing some 73,000,000 adherents. Perhaps 3,000,000 Hanbalites are found in central and eastern Arabia.

The establishment of the schools of law represented the end of the creative periods of the *fiqh*; only details were increasingly elaborated later on. Evolution after al-Shāfi'i, while recognizing the Koran, the Sunna, *ijmā'* and *qiyās* equally as the four roots (*usūl*) of *fiqh*, emphasized the Sunna at the expense of the Koran, which could be modified by the former. The *ijmā'*, in the sense of the agreement of the learned men of any period, came to be regarded as infallible and binding for the entire future. Originally a mere supplement to the Koran and Sunna, it thus evolved into an instrument for their confirmation and even for their abrogation, as when it permitted the worship of saints and introduced the doctrine of the prophet's personal infalli-

bility. Important portions of the law—the caliphate, for example—are based solely upon this *ijmā'*. In the last analysis the entire system of the *fiqh* owes its authority to the *ijmā'*, which vouches for its correctness and for its agreement with the true meaning of the divine sources. Although the *ijmā'* really procured official recognition for important elements of practise, its significance as a source for progressive development in Islamic law should not be overestimated, since it is at least as likely to hinder as to aid the introduction of new ideas. Unsuccessful attempts have been made to add '*urf*'—that is, general usage—to the other four foundations of the *fiqh*. Theoretically the customary law is not acknowledged as binding even when the *fiqh* affords no rule. Despite the fact that the influence of customary law and of foreign legal practise, although not of foreign legal theory, was very important and was taken for granted in the early period of Islamic law, their further infiltration grew extremely difficult after the acceptance of the concept of the *uṣūl* in its final form.

The formal systematization of the legal material was ended by the eleventh century. The works of that period mark the high point for the evolution of juristic concepts. Subsequently casuistry again achieved undisputed predominance; and Islamic law grew more and more inflexible. In the early period and down to the tenth century a knowledge of the *Sharī'a* could be obtained directly by a study of the Koran and tradition. Later, however, there prevailed among the Sunnites the conviction that nobody was authorized to undertake an independent examination of these sources by personal effort (*ijtihād*) but that all are bound to the unquestioning acceptance of what the preceding authorities have regularly established as the law (*taqlīd*). Thus the *Sharī'a* is authoritatively represented to the later generations by the system of *fiqh*, elaborated to cover most trifling details, whose authority rests ultimately on the infallible *ijmā'* of the community. These doctrines have not gone unquestioned. They are denied by the Shiites. The Wahhabites, who arose in the eighteenth century out of a much older trend of thought within the Hanbalite school, reject them and restrict the *ijmā'* to the agreement of the prophet's associates. As a result there were important departures in doctrine, with the purpose of restoring those of original Islam. But like the traditional system the Wahhabite soon reached the stage where further development was impossible.

The first significant theoretical incursion into

the *fiqh* system is that effected by the recent modernist movement, which does not acknowledge the *fiqh* as binding, since it is only the product of the human mind, and which considers it now obsolete as the expression of a prior epoch. It proposes instead to revise Islamic law in conformity with new ideas, on the basis of the most modern interpretation of the Koran and with a corresponding critique of traditions, maintaining at the same time that it attempts a return to the true principles of Islam. The modernist movement in Egypt has quite recently gone beyond a general criticism of the *fiqh* system to the creation of a family law in which an attempt is made to justify formally, by older authorities of the *fiqh*, materially radical innovations. After having been denounced at first as unorthodox the modernist movement is now struggling with an increasing measure of success for recognition within Islam; it promises, in its own sphere of influence, a development of those parts of Islamic law which still retain practical significance. But by their very nature both *Sharī'a* and *fiqh* are hostile to change. Learned jurists are the strongest conservative element in Islam and in spite of the successes of modernism the spiritual power of the traditional *Sharī'a* throughout Islam must not be underestimated. It is a great educational factor and has always been studied most diligently. In most circles it is still considered the sole subject of true learning, despite the warnings of the religious against exaggerating its importance.

The evolution of the *fiqh* as a progressing interpretation of the sources of law, with legislative activity theoretically confined to the prophet, has resulted in the absence of a real codification of the law in the modern sense. But each school of law has its own authoritative *fiqh* works and these have actually become the codes of the orthodox Moslem. In them he finds the *Sharī'a* expounded in the form binding upon him in accordance with the doctrines of that school to which he belongs. Since not everyone is capable of using the books of the *fiqh*, laymen generally require instruction by experts. This is done by means of *fatwa* (opinion, information) handed down by savants called mufti. The "codifications" compiled by Moslems influenced by European ideas, of which the most famous is the Turkish *Mejelle*, are not intended to replace the volumes of the *fiqh* even where they possess official character but have been worked out in order to make the latter's contents more accessible to the layman. The codifications which have been

planned or carried out by European authorities cannot be considered as representative of the pure *Shari'a* if only because of the innovations in their content. The French project for Algeria is the best known.

According to their traditional, unsystematic arrangement, the books of the *fiqh* devote the first chapters to the five principal religious-ritual obligations: ritual purification, divine service (*ṣalāt*), the alms tax (*zakāt*), fasting and the pilgrimage to Mecca. This is usually followed by contracts, inheritance law, marriage and family law, criminal law, the holy war (jihad) and relations with the unbelievers in general, dietary laws, sacrificial and slaughter regulations, oaths and vows, court procedure and the freeing of slaves. Not all of these involve obligatory prohibitions or commandments; in many cases it is merely advisable or reprehensible from the religious standpoint to omit or to do something. Finally, the law also regulates actions which it leaves open as permissible or neutral. Thus actions fall into five classes. This religious valuation has largely superseded the juridical categories proper.

The *Shari'a* never succeeded in translating its claim of absolute validity into practise. It arose essentially as a protest against reality and as the delineation of an ideal, which was looked for only in the bygone early period of Islam and the return of which could be hoped for only under the Mahdi in the indefinite future. As the pious, who laid the foundations of the *fiqh* under the Omniads, were not bound by actualities, the doctrine of obligations evolved by them became largely incompatible with actual practise. After the failure of repeated endeavors to put the *Shari'a* into practise, of which the most notable example was the attempt under the first Abbasides who accorded much influence to the jurists, the pious yielded to the conditions of the time. They obeyed state regulations, retaining, however, full freedom to voice their theoretical criticism. In theory the state acknowledged the *Shari'a* and the learned men as its interpreters, but although it claimed no right of legislation upon the basis of the *Shari'a* in practise it ignored the latter whenever it saw fit. Since all Moslems could not avoid violating the law continually, this state of affairs had to be accepted as willed by Allah; and savants went so far as to declare that it had been foretold by the prophet. The *Shari'a* itself enjoins the acknowledgment of the de facto ruler and the doctrine was developed that necessity transcends the laws. In

situations where conditions made the *Shari'a* difficult to observe ways were found to elude its provisions. An evasion of the prohibition against interest was taken over from the mediaeval West under its Arabic name, *mohatra*. The cadis, whose authority deriving from the *Shari'a* had to be recognized by the government, found their competence gradually curtailed. In this way the law in so far as it was not workable eliminated itself from legal practise, although theoretically it could not accord recognition to differing legal customs but must at best suffer them in silence. Nevertheless, there was no sharply defined boundary between the theoretical system and the state power. This is shown most clearly by legal documents and by the office of the cadi, who was a state official as well as a judge on the basis of the sacred law. Eventually there remained under his jurisdiction only public worship, marriage, personal law, inheritance and in part pious endowments (*waqf*), all of which are in the popular consciousness closely connected with religion. The *Shari'a* never really applied to the field of commercial law, even though practise endeavored to avoid violating in form such fundamental provisions as that which forbade the taking of interest. The secular powers increasingly assumed jurisdiction in matters of constitutional, criminal, military and taxation law as well as the more important property cases. This led to separate legislation alongside the *Shari'a*, of which the best known example is the Ottoman *Kanunnames*, and resulted in codes along European lines, as in Turkey since the epoch of the *Tanzimāt* and more recently in Egypt. Thus throughout Islam there has arisen a twofold administration of justice, the religious and the so-called secular, quite independent of western influence.

Periods of the more or less correct observance of the *Shari'a* have alternated with epochs in which it was violated or totally ignored. The last great wave of its observance began with the rise of the Ottomans. In practise the *Shari'a* is everywhere observed solely because and in so far as it has become customary to do so. The stricter or more lax observance of the law bears no relationship to the degree of religious intolerance; nor is it always the theoretically most important obligations which are complied with, but rather those customs through which the Moslems differentiate themselves from the followers of other faiths. Even in marriage, family and inheritance law the *Shari'a* is restricted by the *āda*, the customary law. In the Dutch East Indies the

'*ada* is even theoretically recognized, outside of theological circles, upon the same footing as the *Shari'a*. In British India and in general throughout the Mohammedan areas under British administration the application of the *Shari'a* in its restricted sphere has been influenced noticeably by special rules of judicial procedure as well as by British legal thought. In Turkey the last stage of the influence of the *Shari'a* on commercial law had been marked by the *Mejelle*, which in some territories detached from the Ottoman Empire is still in force; but already the family law decreed in 1917 involved considerable encroachment upon the *Shari'a* family law, and in 1926, while Islam was still the official religion, Islamic law was entirely abolished. In Egypt family law has been revised since 1920 and the new regulations governing religious jurisdiction have transformed fundamentally the judicial procedure of the *Shari'a*; finally, Parliament has discussed profound changes in the law governing pious endowments. In Algeria and in Morocco, France has officially recognized or allowed the recognition of the Berber common law, which differs from the *Shari'a*, and has in part revised it with the intention of improving the position of women.

In conformity with its character as a religious ethic the *Shari'a* applies in general to Moslems only; the adherents of other tolerated religions, chiefly Jews and Christians, who were considered citizens of a lower class (*dhimmi*), retain in addition to autonomous administration of their cultural and religious affairs their own internal jurisdiction with recourse to the *cadi*, who decides according to Islamic law. This logical conclusion of the Islamic concept of the state has persisted in Mohammedan countries to the present time for those matters which are still regulated by the *Shari'a*. In the Ottoman Empire a community of those professing another faith within the Islamic state was called a *millet*. With the extermination of some non-Mohammedan minorities and the progressive assimilation of others to their Moslem neighbors the *millet* system has been slowly disappearing. In addition to the *millet* system there were the so-called Capitulations, which guaranteed subjects of foreign, non-Moslem states the enjoyment of their own consular jurisdiction. The Capitulations fitted without difficulty into the *Shari'a* doctrine of the protection of foreigners and were from the Islamic point of view a mere extension of the concept of the personal nature of law which held for the *dhimmi*. This like the *millet*

is disappearing or has already disappeared from Islamic territory.

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See: ISLAM; CALIPHATE. See also biographies of important Islamic jurists.

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ISMAIL KEMAL BEY (1844-1918), Albanian statesman. A member of the feudal family of Vlora, which owned large estates in southern Albania, Ismail belonged by descent and education to the Turcophile ruling class. After his more or less voluntary flight from Turkey in 1900, however, he joined the Albanian nationalist movement. He first cooperated with Faik Konitza in the publication of his paper, *Albania*, in Brussels, then edited his own paper, *Salut de l'Albanie*, and later became the leader of the Liberal opposition in the Turkish parliament. He is important historically chiefly for his proclamation of Albanian independence on November 28, 1912. He recognized the necessity of this step in the spring of 1912, a half year before the outbreak of the First Balkan War, in order to prevent the otherwise inevitable partition of the country. He prepared the proclamation through negotiations with the leaders of the great Albanian colony in Bucharest and with the support of Austria-Hungary and finally seized the right moment for its promulgation after the outbreak of war.

Ismail directed the government of Albania until January 22, 1914, when he surrendered his full powers to the International Commission of Control. His rule was marked by fundamental reforms, especially in the religious field. He was also active in endeavoring to preserve the territorial integrity of Albania by means of personal negotiations at Rome, Vienna, Paris and especially at the London Balkan Conference. His career as a statesman was finally terminated when after the accession of Prince Wilhelm of Wied he demanded the division of the country into three cantons after the Swiss model, the creation of Italian and Austro-Hungarian spheres of influence and the departure of the prince. The storm of opposition to these proposals forced him to flee to Italy, where he remained until his death. Although Ismail has been frequently accused of betraying his country for money, this charge has been proved to be entirely without foundation.

NORBERT JOKL

*Consult: The Memoirs of Ismail Kemal Bey*, ed. by Sommerville Story (London 1920); Swire, J., *Albania* (London 1929).

ISMAY, THOMAS HENRY (1837-1899), British shipowner. Ismay was the son of a shipbuilder and was apprenticed to Imrie and Tomlinson, a Liverpool shipping firm, at the age of sixteen. After traveling to South America he

became in 1860 junior partner in Nelson and Company. In 1867 he purchased the flag of the White Star Line, an Australian sailing fleet, and built iron clippers. In 1869 he founded the Oceanic Steam Navigation Company (White Star Line), running between England and the United States, which developed one of the world's leading merchant fleets. Together with the shipbuilding firm of Harland and Wolff of Belfast, Ismay produced a faster and more comfortable type of Atlantic liner than hitherto known, beginning with the *Oceanic* in 1871. Although Ismay refused to enter Parliament he was a staunch Liberal, was interested in public affairs and served on important government commissions relating to military and naval administrative questions. During the crisis of the Russo-Turkish War in 1878 he put the White Star fleet at the disposal of the government for war purposes. This tender led to the practise of state subsidy for the building of large, swift steamships transformable into auxiliary fighting cruisers or transports, and in 1897 the White Star *Teutonic* participated in a naval review as a small cruiser. Ismay contributed \$100,000 to the establishment of a sailors' pension fund. He left an estate worth more than \$5,000,000.

A. W. KIRKALDY

ISOLATION. The stability or instability of isolation depends upon the characteristics of the existing culture which forms the basis for individual and social behavior. The isolation of castes and ranks in early historical ages, for example, was relatively stable; that of social classes in later individualistic forms of civilization has been relatively unstable. A group may seek and emphasize isolation by aristocratic exclusiveness, while external egalitarian countertendencies of democracy may endeavor to abolish the isolation. Conversely, an expelled group with pariah status may try to avoid the isolation which has been imposed upon it. A voluntary isolation, which is also emotionally conditioned by hostile sentiments, has a powerful integrating effect; it turns the isolated group into a closed community and makes it tenacious and enduring. An involuntary isolation based on feelings of strangeness and indifference exerts only an associative effect and results merely in a loose and temporary external community of interests. Even under conditions of spatial symbiosis extensive isolation may exist when the demarcation of the group from its surroundings is due to psychological barriers. On the other hand, spatial

separations may be overcome by sociological and psychological bonds that transcend them. Natural topographic features, artificial national and administrative boundaries, military fortifications and prison walls furnish frames for spatial isolation. The attitude of the isolated group toward the isolation thus achieved determines whether and to what extent the available means of communication may be utilized to break down the boundaries. In some cases occasional visits of tourists to isolated communities may inspire the natives with a desire to emigrate by making them conscious of their isolation. A group of prisoners of war thrown together in involuntary isolation may be integrated by a spirit of camaraderie as a result of joint plans for escape.

The sociological composition and structure of the isolated group determines its degree of self-sufficiency and power of survival as well as its capacity for adaptation to changed temporal and cultural conditions. The self-sufficiency of an isolated group may increase—either in respect to its needs, as, for example, by the habituation of the group to primitive conditions or to solitude, or in respect to the satisfaction of its needs through a change in the economic situation or in the conditions of communication. The character of the biological results of isolation, such as inbreeding, susceptibility to certain diseases and the effect on birth and death rates, as well as the nature of the effects of tradition and habit, such as peculiar customs and handicrafts, is also dependent upon the composition and structure of the isolated group. Social, religious and ethnic uniformity or multiplicity, the possibility of changing one's mode of life within the isolated group, the normal or abnormal ratio of the sexes or of different ages, the variability of the size of the group and the possibility of territorial extension are among the decisive factors involved. Both the absolute size of the group and its numerical ratio to its immediate environment are also important in determining the specific effects of isolation.

The sociological basis of isolation may change: religious isolation may turn into national or national into economic. Often the basic legal reason for isolation is eliminated as a result of historical changes, but the isolation may continue either because of political or economic privileges or because of mere habit. Involuntary isolation may change into voluntary isolation and vice versa, or an isolation originally spatial may become independent of such barriers. Barracks,

boarding schools, college dormitories and sanatoria are examples of forms of temporary isolation which are widely used as community measures to increase individual and collective efficiency. Religious struggles and nationalist movements may result in the isolation, by mass emigration or demarcation, of certain groups, which may become integrated in ethnic communities. Only after the original cause of the isolation is no longer effective can it be determined whether and under what conditions the isolation will be maintained and whether a return to and merging with the old condition of life or a separation and dissolution into a new will follow. The abolition of the ghetto, for example, has had national, cultural and religious assimilatory effects; it has also resulted in the formation of special religious and political groups, such as that of the Zionists.

Isolation may be on one side only, as when a group is expelled from a society and is avoided or when the group isolates itself; in both cases it lies in the discretion of the society to maintain the isolation or at least to make an endeavor to break through it. Component states of a federative empire and church parishes, on the other hand, are examples of mutual forms of isolation. Most forms of specific isolation presuppose complementary behavior in other respects. A troop of prisoners of war isolated by military authority requires measures of supervision and feeding which in part annul the isolation. An aristocracy which isolates itself permanently requires an extensive servant class, which it trains in order to be able to separate itself from the mass of the people. Thus any kind of isolationist action is accompanied by associatory auxiliary activity directed toward attaining the ends of isolation; often these auxiliary factors contain the germs of the forces which are destined to burst the bonds of the isolation.

Problems arising from isolation are to a certain extent related to differentiation and individualization on the one hand and to integration and leveling on the other. Cultures in which agriculture predominates are characterized by isolation; while nomadic, hunting and military cultures counteract isolation by communication and mobility. Mutual isolation aids the continuity of cultural forms but also results in the gradual differentiation of originally homogeneous social elements because of differences in the tempo of development; for example, in the field of language where ancient and undeveloped forms of speech and dialects persist. Isolation

tends to dissolve and hinder the development of large units, societies and groups; but it may be to the advantage of a people to maintain reserve forces which are removed from the cultural effects of urbanization through the isolation of its rural population or the inhabitants of its remote districts. This may have a negative, narrowing, stunting and one-sided effect upon the isolated group but it may also exert a positive effect through intensifying characteristic features of its culture. Social institutions which serve to isolate certain subgroups may in this way lead to the accumulation of outstanding achievements of a political, scientific or technical nature in these subgroups through specialized tradition which benefits the entire culture.

The spread of world religions; the rapid advance of techniques of communication; the opening of remote and sparsely settled regions; movements involving democratization, urbanization and industrialization; the present interrelations of world economy; the formation of huge empires; and the mobilization of the earth's population in the World War, have resulted in the pronounced decline of the tendency toward voluntary isolation. The isolation which still exists is in a very unstable condition. The trend away from the land, the movement of populations from high mountain zones, are phenomena which favor association and intermixture rather than isolation. On the other hand, during the present world economic crisis there is a revival of the phenomena of isolation resulting from protective tariff policies, trends toward economic self-sufficiency and the development of nationalism of small countries. Likewise there is in many places a countertendency against cosmopolitanism and against the obliteration of denominational, social and national peculiarities which is using isolation as a method rather than as a permanent form.

MAX HILDEBERT BOHM

See: ISOLATION, DIPLOMATIC; SEGREGATION, ETHNIC COMMUNITIES; GHETTO; MOBILITY, SOCIAL; ASSIMILATION, SOCIAL; COMMUNICATION; LANGUAGE, DIALECT; LITERACY AND ILLITERACY, FLUIDS; ETHNOCENTRISM; RACE, RURAL SOCIOLOGY; URBANIZATION; COSMOPOLITANISM.

Consult: Wiese, Leopold von, *Allgemeine Soziologie als Lehre von den Beziehungen und Beziehungsgebilden der Menschen*, 2 vols. (Munich 1924-29), adapted and simplified by Howard Becker as *Systematic Sociology* (New York 1932) chs. viii-ix; Simmel, Georg, *Soziologie* (3rd ed. Leipzig 1923); Park, Robert E., and Burgess, Ernest W., *Introduction to the Science of Sociology* (2nd ed. Chicago 1924); Zorbaugh, H. W., *Gold Coast and Slum* (Chicago 1929) chs. x-xi; Wirth, Louis, *The*

*Ghetto* (Chicago 1928); Blumenthal, Albert, *Small-town Stuff* (Chicago 1932); Hogue, Wayman, *Back Yonder* (New York 1932); Randolph, Vance, *The Ozarks* (New York 1931); Jenness, Diamond, "The Eskimos of Northern Alaska" in *Geographical Review*, vol. v (1918) 89-101; Moffat, Adelene, "The Mountaineers of Middle Tennessee," Porter, J. Hampden, "Notes on the Folk-lore of the Mountain Whites of the Alleghenies," and Parker, Haywood, "Folk-lore of the North Carolina Mountaineers" in *Journal of American Folk-lore*, vol. iv (1891) 314-20, vol. vii (1894) 105-17, and vol. xx (1907) 241-50; Beynon, E. D., "Isolated Racial Groups of Hungary," and Peattie, Roderick, "Isolation of the Lower St. Lawrence Valley" in *Geographical Review*, vol. v (1918) 102-18.

**ISOLATION, DIPLOMATIC.** Diplomatic isolation involves the enforced exclusion or the voluntary and deliberate abstention of a state from the councils of the powers or from participation in affairs of general interest. From the sixteenth to the nineteenth century international affairs centered largely upon the relations of the great powers of Europe to one another. The guiding principle was balance of power, a principle which involved action to prevent the concentration of undue influence and power in any one state. It was therefore a common practice for powers which felt themselves threatened by the predominance of another to unite against the latter, to isolate it if possible and eventually to break its preponderance by military defeat. Such was the nature of the alignment and conflict against the Hapsburg power in the sixteenth and seventeenth centuries, against the power of France in the periods of Louis XIV and Napoleon and against the new Prussian state of Frederick the Great in the Seven Years' War. At this period the isolation of the power to be attacked was part of the regular preparation for war and part of the accepted strategy of diplomacy. The coalition which preceded the War of the Spanish Succession, the famous Diplomatic Revolution of 1756, the combination of powers which dismembered Poland and the alliances against France in the revolutionary and Napoleonic periods are all classic examples of international groupings designed to isolate the power against which the action is directed.

But the isolation of a power was not necessarily a preliminary to armed conflict. It might be effected for prophylactic purposes with the idea of preventing such conflict or aggression. It then frequently involved the union of power and influence of a number of smaller or weaker states against one large or powerful state. Examples of this practise may be found in the *Fürstenbund* organized by Frederick the Great against Joseph

II of Austria and in the so-called Armed Neutralities of the later eighteenth century.

The growth of the idea of the concert of Europe and the spread of the idea of cooperation among nations made the application of the policy of isolation less frequent in the nineteenth century than in the days of the old cabinet diplomacy. In the years following the Napoleonic wars France was very effectively isolated by the Quadruple Alliance, and the victorious powers attempted to prevent the recrudescence of aggressive policy by building up a bulwark of powers on the French frontiers as well as by means of an allied occupation of French territory and the imposition of a heavy indemnity. But France was readmitted to the councils of the powers at the earliest possible moment. She was effectively isolated again, in the purely diplomatic sense, in 1840, when four great powers united to impose a solution of the eastern crisis from which France dissented. In the years preceding 1870 Napoleon III attempted to isolate Prussia by effecting a combination between France, Austria and Italy, but this policy was frustrated by Bismarck when he forced the issue in 1870 and completely defeated France. The roles were then reversed, and in the period from 1870 to 1890 the German chancellor devoted his efforts to the construction of a great alliance system which was designed to prevent France from finding among other powers support for her aspirations and hopes for revenge. The Franco-Russian Alliance of 1894 put an end to France's isolation, and with the building up of the Triple Entente in the years 1904 to 1907 it was the Germans who began to fear isolation and talk of "encirclement." In reality no European power was isolated in the period immediately preceding the World War. It was not until after the defeat of the Central Powers that the old policy was put into practise once more. The French system of alliances with states like Poland, Czechoslovakia, Jugoslavia, as well as the combination of states known as the Little Entente is designed to isolate Germany and Hungary and to provide protection for all eventualities. Similar efforts were made in the post-war period to isolate Russia and to cut her off from intercourse with the other powers.

These examples will show that isolation may be carried out for aggressive or defensive purposes, in modern times more commonly for the latter than for the former. It may be effected by various methods. Usually the effort is made to construct a coalition of powers which will ef-

fectively deprive the state acted against of support from outside, according to the principle enunciated by Bismarck that in a world of five great powers a state should always strive to be one of the group of three. Powers centrally located are always more exposed to isolation than those on the fringe, so to speak. A central power may be surrounded by a group of hostile states and completely hedged in by enemies. It is also more exposed to economic and financial pressure, to curtailment of food supply and to other restrictive measures made possible by the improved methods of communication and transportation. But isolation in the broadest sense of the term can rarely if ever be successful. Politically speaking the friendship of a state threatened by isolation can usually be had so cheaply that it will inevitably find a bidder and the coalition opposed to it will soon begin to disintegrate. On the other hand, the modern world is economically so much of a unit that states have become interdependent in politics as well. For that reason complete isolation is impossible and the policy of isolation has become a dangerous anomaly. In the future it is bound to become more and more a purely punitive measure directed against an offending state by the decision of a supernational tribunal.

Of very different nature is the deliberate abstention of a state from the councils or actions of the powers. Small or weak states even on the continent of Europe have frequently followed a policy of self-imposed abstention in all disputes of a military or political nature. In the case of Switzerland this end has been attained by the acceptance of neutrality, internationally recognized. In the case of states like the Netherlands and the Scandinavian group it goes no further than refusal to become involved in territorial disputes or military operations. None of these states have ever shown the least disinclination to cooperate with other states in work of common interest, especially in work in the interest of peace. On the contrary, they have generally taken an exceptionally active part in all movements for international cooperation.

States geographically separated from Europe have generally tended to stand somewhat aloof from continental squabbles. Far from dreading isolation they have extolled it and urged it as a national policy. Thus the English since the time of Wolsey have been ardent advocates of the principle of balance of power on the continent, but they have usually tried to abstain from interference with continental affairs except when the

equilibrium was threatened or when direct English interests—political in the case of Hanover, but usually commercial—were involved. During the nineteenth century the representatives of the Manchester school carried the doctrine of abstention to extremes, making a veritable dogma of "splendid isolation." In the time of Gladstone and Granville there was little interest in the political affairs of the continent and England's prestige sank rather low. But this was merely a passing phase. Even the most irreconcilable Manchesterites never advocated abstention from anything but political and military affairs. They favored closest commercial intercourse and were convinced workers in the cause of peace and international understanding. The Conservative party and later the liberal-imperialist group always took an active interest even in political matters of international concern. Lord Salisbury while he abstained from definite written commitments aligned his country with the continental groups and his successor brought the period of isolation to an end with the signature of the Anglo-Japanese Alliance. A Liberal ministry approved the entente with France and concluded the agreement with Russia. Both parties approved of England's intervention in the World War, and in the post-war period England has played a prominent and important part in international affairs. Manchester doctrines are now forgotten and both the imperialist and labor movements presuppose active participation in world affairs.

Perhaps the most remarkable example of deliberate abstention in international politics is to be found in the foreign policy pursued by the United States government for over a century and still regarded by many Americans as a sacred legacy. The fathers of the country, mindful of the days when the colonies were still mere pawns in the game of European diplomacy, were at one in their aversion from entanglement with the European system. Their feelings in this matter were undoubtedly accentuated by their fear for the young republic, regarded with hostility by the European monarchies. "We ought to lay it down as a first principle and a maxim never to be forgotten, to maintain an entire neutrality in all future European wars," said John Adams in 1775. Jefferson thought that the new nation should "stand with respect to Europe precisely on the footing of China" and should, like the Turks, keep out of European affairs. Congress in 1783 resolved that "the true interest of the states requires that they should be as little

as possible entangled in the politics and controversies of European nations," while Washington in his Farewell Address gave classic expression to the idea in these words: "Europe has a set of primary interests which to us have none or a very remote relation. Hence she must be engaged in frequent controversies, the causes of which are essentially foreign to our concerns. Hence, therefore, it must be unwise in us to implicate ourselves by artificial ties in the ordinary vicissitudes of her politics or the ordinary combinations and collisions of her friendships and enmities."

It should be noted that Washington himself declared that "we may safely trust to temporary alliances for extraordinary emergencies" and that his objection was chiefly to "permanent" alliances. Jefferson too, who used the famous phrase "entangling alliances" in his inaugural of 1801, had no objection to cooperation for specific purposes, as in the case of the Monroe Doctrine negotiations of 1823. Nevertheless, throughout the nineteenth century American statesmen were prone to place a strict interpretation upon Washington's words and frequently refused cooperation with European powers even in cases where these interests were identical with American interests. Often in such cases the American government took exactly the same action while refusing joint action. On the other hand, there were notable exceptions to this general rule. At the time of the Hungarian Revolution of 1848-49 the United States assumed a stand not far removed from interference in the domestic affairs of another nation. At other times the government expressed itself very strongly in behalf of the Irish and of the Jews in Russia and Rumania. In Latin American affairs the abstention practised toward European questions was never observed. As early as 1826 Congress voted to participate in the Pan-American Congress at Panama and in 1875 Secretary Fish went so far as to propose to European powers that they intervene jointly with the United States to restore peace between Spain and the Cuban rebels. Much the same attitude was taken toward far eastern issues. In 1864 the United States acted jointly with Great Britain, France and the Netherlands against Japan. It cooperated with the other powers at the time of the Boxer rebellion and took the initiative in putting forward the doctrine of the open door. President Roosevelt took a lively interest in the Russian-Japanese conflict and acted as intermediary to bring about the conclusion of peace.

In general then it may be said that American isolation was maintained chiefly with regard to

the political alignments and affairs of Europe. As international cooperation developed in the later nineteenth century the government took part in many conferences for the regulation of the postal services, weights and measures, cables, copyrights, sanitary services, sea law and other matters. The United States took an active part also in the work of the two Hague peace conferences, to say nothing of the essentially political conferences on the affairs of Morocco (1880), the Congo (1884-85) and Morocco again (1906). The action of the government in the last named instances roused much opposition, but there was in the pre-war period a growing feeling, eloquently expressed by men like Senator Lodge, that Washington's words must not be too strictly construed and that the United States with growing commerce and interests abroad could not and should not stand aloof from matters of general concern. In the World War the principle of isolation was completely discarded and the United States became deeply involved even in the affairs of Europe. President Wilson was an opponent of the ideas of the balance of power and the "game" of the old diplomacy, but he was a vigorous advocate of international cooperation for the advancement of peace, security and the common interests of mankind and insisted that "there is no entangling alliance in a concert of power." His policy, which is best set forth in the Covenant of the League of Nations, met with bitter opposition from the leaders of the Republican party, notably from Senator Lodge, who evidently changed his attitude to meet the exigencies of party politics. The peace treaty with Germany, the Guarantee Treaty with France and the Covenant of the League were rejected by the American Senate, although the same body raised little objection in 1922 to the so-called Four-Power Treaty relating to the Far East. The conflict which arose over the action of President Wilson did, however, lead to a revival of the isolationist teaching, and the experience of 1920 has made the government wary of far reaching commitments. But the growth of American commerce, the increasing export of capital, the ramifications of the reparations and interallied debt problems, have involved the United States so deeply in general world affairs that the government has been obliged to take an active part and even to collaborate with the League, unofficial though its action at times has been.

In the modern world with the growing economic and therefore political interdependence of nations it is quite as impossible for a state to

maintain a deliberate isolation as for a group of states to impose isolation on any other. The machinery of the League of Nations is designed to prevent a recrudescence of the old diplomacy and to replace purely selfish, national action by international cooperation. The old system and the old practise continue, but they are falling into ever greater disrepute and are bound gradually to disappear as the new system establishes itself.

WILLIAM L. LANGER

See: INTERNATIONAL RELATIONS; DIPLOMACY; ALLIANCE, BALANCE OF POWER.

Consult: Dupuis, Charles, *Le principe d'équilibre et le concert européen* (Paris 1909); Windelband, Wolfgang, *Die auswärtige Politik der Grossmächte in der Neuzeit, 1494-1919* (2nd ed. Stuttgart 1925); Hoyer, Olof, *La sécurité internationale et ses modes de réalisation*, 4 vols. (Paris 1930) vol. 1; Seeley, John R., *The Growth of British Policy*, 2 vols. (Cambridge, Eng 1897); Egerston, Hugh E., *British Foreign Policy in Europe to the End of the 19th Century* (London 1917); Dawson, William H., *Richard Cobden and Foreign Policy* (London 1926); Latané, John H., *A History of American Foreign Policy* (New York 1927); Garner, James W., *American Foreign Policies* (New York 1928); Blakeslee, George H., *The Recent Foreign Policy of the United States* (New York 1925); Belmont, Perry, *National Isolation an Illusion* (New York 1925); Vandenberg, Arthur H., *The Trail of a Tradition* (New York 1926); Kantorowicz, Hermann, *Der Geist der englischen Politik und das Gespenst der Einkreisung Deutschlands* (Berlin 1929), rev. by the author and tr. by W. H. Johnston (London 1931) chs. v-vi.

ITAGAKI, COUNT TAISUKE (1837-1919), Japanese politician and statesman. From early youth Itagaki identified himself with the contemporary movement for the restoration of the authority of the emperor and represented his native clan of Tosa, one of the four influential daimios allied against the then tottering Tokugawa shogunate, in Kyoto, the center of the anti-shogunate forces. When the new Japan was being organized under imperial control, he headed an expeditionary force sent to bring about the submission of the feudatories in the north who were supporting the shogun against the emperor.

Itagaki was one of the builders of modern Japan. He was the minister of industry in the new imperial government but resigned from office when the ministry refused to declare war on Korea. Seeing in this a defeat of popular sentiment he started the agitation for a parliamentary form of government in Japan. To further his program he established an educational institute (Risshi-sha) in which the students were taught the principles of parliamentary govern-

ment and which served as a model for similar schools. In 1881 he succeeded in organizing under his leadership the first nation wide political party, which was known as *Jiyuto*, or Liberal party. In 1887 in recognition of his distinctive services to the country he was created a count, an honor which he vainly tried to decline because of his opposition as a Liberal to the institution of a hereditary peerage. Later, when the constitution was proclaimed and the parliament established, he was twice recalled to the government's service as minister of the interior. His political importance ceased, however, in 1900 when his party was merged into the *Seiyukai*, a new party under the leadership of Prince Ito. The rest of his life was devoted to the cause of social reform.

RYUSAKU TSUNODA

*Consult:* Morris, J., *Makers of Japan* (London 1906) ch. xviii; Uyehara, G. E., *The Political Development of Japan 1867-1909* (New York 1910) p. 89-91.

ITO, PRINCE HIROBUMI (1841-1909), Japanese statesman and diplomat. The son of a samurai in the fief of Choshu under Lord Mori, Ito was trained in the Chinese classics and military science but after Commodore Perry's arrival in Yeddo Bay he turned his attention to the study of English. Disregarding the law which forbade all Japanese to go abroad, in 1863 he secretly went to England, where he studied the language and was impressed by the material achievements of western civilization. The next year he returned to Japan hoping to dissuade Lord Mori, who had been bitterly opposed to the shogunate's policy of opening the country to international intercourse, from bombarding foreign vessels passing through the Strait of Shimonoseki and subsequently negotiated an agreement between the warring parties. From then on he was almost continuously in the government service and held many important posts, including those of vice minister of finance, minister of public works, minister of home affairs and prime minister.

Ito was one of the leaders in developing modern Japan and was intimately connected with many reforms, including financial reorganization. In 1870 he went to the United States to study its monetary system; and in 1871 the government upon his recommendation adopted the gold standard, which was later changed to a bimetallic system. But in domestic affairs he is known especially as the father of the constitution. Between 1882 and 1883 he traveled abroad studying the constitutions of European nations and

upon his return drafted the constitution which was promulgated in 1889. Believing that Japan was not ready for truly representative government and anxious to preserve the traditional political principles of the Japanese, Ito embodied in the constitution the complete authority of the emperor in conjunction with decidedly limited representative institutions. From 1890 on he helped to steer the government on its difficult course, constantly hampered as it was by the immature party politics which marked the history of early constitutional Japan. He himself remained aloof from political parties until in 1900 he became president of the *Seiyukai* party and organized his fourth and last cabinet.

In foreign affairs also he was a dominant figure. He visited the United States and Europe from 1871 to 1873 as a member of the famous Iwakura mission, the object of which was to secure treaty revision and to gather information on administrative matters. In 1895 as prime minister he signed with Li Hung Chang the Shimonoseki Treaty, which ended the war with China but which brought about Russo-German-French intervention compelling Japan to retrocede the Liaotung Peninsula to China. In 1901 he went to Europe with the idea of entering into an entente with Russia on the Manchurian question, but the Katsura cabinet rejected his recommendations and entered instead into an alliance with England. He favored an understanding between Russia and Japan, because he believed that it would lead to a peaceful settlement of their conflicting interests whereas the British alliance would only tend to aggravate the situation. From 1905 to 1909 he was resident general of Korea and inaugurated a program of widespread reform, which, however, he was unable to realize completely. He was assassinated by a Korean in 1909.

KIYOSHI K. KAWAKAMI

*Consult:* Lawton, Lancelot, "Prince Ito: His Life Work and His Influence upon the National Policy of Japan" in *Imperial and Asiatic Quarterly Review*, 3rd ser., vol. xxix (1910) 308-37; Morris, J., *Makers of Japan* (London 1906) ch. vi; Treat, P. J., *The Far East* (New York 1928), *Kaikoku Gōyūnen Shi*, compiled by Count Shigēnobu Ōkuma, 2 vols. (Tokyo 1908), tr. as *Fifty Years of New Japan*, ed. by M. B. Huish (London 1909).

IVAN IV (Ivan the Terrible) (1530-84), czar of Russia. Ivan was orphaned as a child and the great Muscovite boyars ruled in his name with such disregard for his person as to arouse him to passionate hatred of the old aristocracy and strong desire for autocratic rule. His personal

reign began in 1547, when he adopted the title of czar. For a few years his rule was peaceful: he issued a law code, established elective local government, initiated national consultative assemblies with local representation (*zemskie sobori*). In 1560 he broke definitely with his former advisers and surrounded himself with people of non-aristocratic origin. This marked the beginning of a new era, which culminated in 1565 in the creation of a personal bodyguard (*oprichniki*); it was to protect the czar, who suffered from a delusion of persecution, scented treason everywhere and acted with pathological cruelty. The *oprichniki* carried out a policy of ruthless terrorism directed at first against the princes and boyars and later against other classes as well. The power of the landed aristocracy was undermined by the expropriation of its patrimonial estates, and the class of small and middle landed gentry (*dvoryane*) was thereby raised in importance. As vassals of the state the latter were obliged to perform military service for life, and their estates were inalienable, uninheritable and recapturable by the state for abuse of official duties. At the same time the peasants gradually lost the right of changing their masters; this process of binding the peasant to the soil was not completed, however, until the early part of the seventeenth century. Russia was thus transformed from an aristocratic state into an oppressive autocracy with the population bound to a variety of compulsory services and suffering from the excesses of official terrorism.

Ivan's reign was marked by great territorial expansion of Russia. As a result of the conquest of the Tartar khanates of Kazan in 1552 and of Astrakhan in 1556 areas along the entire course of the Volga were annexed. In 1582 western Siberia was added. In 1558 Ivan opened war on Livonia for control of the Baltic coast, later extending it against Sweden and Poland; the war continued with varying fortunes until 1582, when domestic disorder caused its collapse.

A. A. KISEWETTER

Consult: Platonov, S. F., *Ivan Grozny* (Ivan the Terrible) (Petrograd 1923); Kluchevsky, V. O., *Kurs ruskoj istorii*, 5 vols. (vol. i in 3rd ed., vols. ii-iv in 2nd ed., Moscow 1921-23), tr. by C. J. Hogarth as *A History of Russia*, 5 vols. (London 1911-31) vol. ii; Kurbsky, A. M., *Skazaniya knyazya Kurbskago*, ed. by N. Ustryalov (3rd rev. ed. St. Petersburg 1868), tr. by K. Stählin and K. H. Meyer as *Der Briefwechsel Ivans des Schrecklichen mit dem Fürsten Kurbskij* (1564-79) (Leipzig 1921).

IVO OF CHARTRES. See YVES OF CHARTRES.

IXTLILXÓCHITL, FERNANDO DE ALVA (c. 1578-1648), Mexican historian. Ixtlilxóchitl, a mestizo, was the direct descendant of the poet and sage, King Netzahualcōyotl of Tezcucō, and of the Aztec king Cuitlahuac, who drove the Spaniards out of the city of Mexico in June, 1520, in the famous *noche triste*. He possessed an intelligent and profound knowledge of the historical tradition, language and hieroglyphic writing of his indigenous ancestors and devoted a great part of his life to the writing of numerous works concerning the historical evolution of New Spain from the remotest times to the seventeenth century. These works show Christian and Spanish influences, but as they seek to glorify the culture and exploits of his Tezcucō ancestors they represent in certain respects the native point of view. Ixtlilxóchitl considered the history of his people to be as important as the histories of the Romans or the Greeks. On the other hand, the nineteenth century Mexican patriots who, seeking to exalt their country's Indian traditions, circulated a portion of his work as a faithful and candid description of the "horrible cruelties of the conquerors of Mexico and of the Indians who aided them" were uncritical in their methods and unmindful of obvious differences between their attitude and his. The widely diffused but disputed impression that the Spaniards barbarously obliterated the carefully kept records of a remarkably high civilization in Mexico rests to a considerable degree on his statements. He explained the advanced character of this civilization by the influence of an idyllic Toltec people whose very existence was long denied. His credulity—modified, however, by euhemerism—his partisanship and the use of his work for partisan purposes have served to discredit Ixtlilxóchitl. Nevertheless, his writings, which constitute a rich source of data on Mexican ethnography, hieroglyphics, linguistics, folklore and poetry, are of value to the investigator who seeks to understand the social phenomena that characterized the pre-Hispanic life and the first contacts of Spaniards and aborigines.

MANUEL GAMIO

Works: *Obras históricas*, ed. by A. Chavero, 2 vols. (Mexico 1891-92). The majority of Ixtlilxóchitl's works are to be found in Kingsborough, E. K., *Antiquities of Mexico*, vol. ix (London 1848) p. 197-467.

Consult: Boban, Eugène, *Documents pour servir à l'histoire du Mexique*, 2 vols. (Paris 1891) vol. i, p. 211-18; Castillo, Ignacio B. del, "Apuntes para la genealogía de los Señores de Teotihuacan, sect. 2, Don Fernando de Alva Ixtlilxóchitl" in Mexico, Secretaría de



Agricultura y Fomento, Dirección de Antropología, *La población del valle de Teotihuacan*, 3 vols. (Mexico 1922) vol. 1, pt. II, p. 538-47, Weber, Friedrich, *Beiträge zur Charakteristik der älteren Geschichtsschreiber über Spansisch-Amerika* (Leipzig 1911) p. 108-12; García Icazbalceta, Joaquín, "Juan de Zumárraga and the Precolumbian Records of Mexico" in *Inter-America* (English edition), vol. VII (1923-24) 177-97, 284-305.

**IZVOLSKY, ALEXANDER PETROVICH** (1856-1919), Russian statesman and diplomatist. Izvolsky, a member of the lesser rural nobility, entered the Foreign Office under Prince Gorchakov and was appointed successively to diplomatic posts at Bucharest, Washington, the Vatican, Belgrade, Munich, Tokyo and Copenhagen. Long before the revolutionary outbreak of 1905 he foresaw the dangers that beset Russia from the short sighted bureaucracy which surrounded Nicholas II. Sympathizing with English liberalism, he desired the gradual introduction of a parliamentary system.

As minister at Tokyo Izvolsky had the wisdom and insight to warn his government that a continuation of the Russian policy in Manchuria would lead to war with Japan. His warning was unheeded, but its verification enhanced his reputation and after a short residence at Copenhagen he was appointed Russian minister of foreign affairs. Ambitious to regain for his country the prestige lost in the Far East, he undertook to advance Russian interests in the Near East. As a first step he negotiated the Anglo-Russian Convention of 1907, smoothing out rivalry in Tibet, Afghanistan and Persia and establishing with France the Triple Entente. Then he secretly proposed to Count Aehrenthal at Buchlau that Austria should annex Bosnia and Herzegovina and that in return the straits of Bosphorus and Dardanelles should be opened to Russian warships. Aehrenthal quickly secured his part of the bargain, but England opposed Izvolsky's proposal for opening the straits. This diplomatic failure caused him to be severely criticized in Russia and greatly embittered him for the rest of his life against Austria. It was one of the reasons for his giving up the Foreign Office in 1910 to go as Russian ambassador to Paris, where he served until the establishment of the Kerensky government in 1917. At Paris he cooperated with French officials, especially with Poincaré, in strengthening and tightening the Triple Entente in preparation for a war which should at last secure Russia's ambitions in the Near East.

SIDNEY B. FAY

*Consult.* The most exhaustive collections of Izvolsky's

diplomatic correspondence are *Der diplomatische Schriftwechsel Izvolskis*, 4 vols. (Berlin 1924), covering the period from 1911 to 1914, and *Izvol'ski im Weltkriege . . . 1914-17* (Berlin 1925), both edited by Friedrich Steue and drawn from earlier collections based on Russian archive material. A historical analysis of the documents may be found in Steue, F., *Izvol'ski und der Weltkrieg* (Berlin 1924), tr. by E. W. Dickes (London 1926). Izvolsky's earlier career is sketched in his *Memoirs* (Paris 1923), tr. from ms. by C. L. Seeger (London 1920). For the general diplomatic background see Fay, S. B., *Origins of the World War*, 2 vols. (and rev. ed. New York 1930).

**JABAVU, JOHN TENGO** (1859-1921), Bantu politician and publicist. Jabavu was the most prominent of a small group of educated Bantu who interpreted the needs of their race while it was first being brought under the influence of the culture and political institutions of South Africa's white rulers. For nearly forty years he owned and edited the English-Xosa weekly newspaper *Imvo zabantsundo* (Native opinion) and took a leading part in Bantu religious, educational and political movements. His efforts resulted in the grant of free primary education and the establishment of the South African Native College, which provides university training. Moved by a liberal attitude founded on religious convictions which became more and more influenced by Quaker thought, Jabavu believed in democratic government, for the introduction of which he considered the Bantu tradition of free public discussion a sound background. On several occasions he protected with courage and ability the Cape franchise, free from the color bar. He led his people in resisting many repressive educational and land tenure measures and fought against harsh treatment of rebellious chiefs who had lost their independence. He declined to run for the Cape house of assembly on the ground that the presence of a native would be premature and more dramatic than politically effective; instead he urged the support of a liberal white candidate. Toward the end of his life his popularity waned on account of party differences over the Native Land Act of 1913 and on account of opposition to his leadership by the Xosa section of the Cape because he was a Fingu and thus considered outcaste. Under Jabavu's leadership the Bantu peoples raised themselves in the estimation of the white men in South Africa.

J. D. RHEINALLT JONES

*Consult:* Jabavu, D. D. T., *The Life of John Tengo Jabavu* (Alice, C. P. 1922); Gollock, G. A., *Lives of Eminent Africans* (London 1928) p. 106-16.

JACINI, STEFANO FRANCESCO (1826-91), Italian economist and statesman. Jacini's father owned and administered vast estates and silk factories, and Jacini himself became early interested in agricultural problems. The events of 1848-49 interrupted his study of law, but he did not, like the majority of Lombard youth, volunteer in the Italian army; study in Switzerland and Austria and extensive travel turned him toward cosmopolitanism and he displayed an innate aversion to revolutionary methods. A few years later, however, he rendered conspicuous service to the Italian cause by his writings, which although cautiously phrased to avoid police action demonstrated incontrovertibly that the unfortunate condition of Lombardy was due to Austrian misgovernment. Jacini's works were immediately received with high praise in Italy and abroad; Cavour after secret communications with him chose him as one of his ministers almost immediately after the liberation of Lombardy in 1860. He served until 1862 and again from 1864 to 1867. He was prominent in reorganizing and unifying the railroads and other public services and was most influential in forwarding the construction of the St. Gotthard Railway connecting Italy with Germany. Later he sat in the Senate and directed the parliamentary commission for agricultural inquiry (1877-85). For the report of this commission he prepared the introduction, the section on Lombardy and the final summary; the last served as a model for many similar studies and was regarded as the most authoritative presentation of agrarian conditions in pre-war Italy.

SALVATORE PUGLIESE

*Important works.* *La proprietà fondiaria e le popolazioni agricole in Lombardia* (Milan 1854, 4th ed. Milan 1857); *Sulle condizioni economiche della provincia di Sondrio* (Milan 1858), *Frammenti dell'inchiesta agraria* (Rome 1883). Jacini's contributions to the agricultural inquiry, which were later published again as *L'inchiesta agraria* (Piacenza 1926).

*Consult:* Jacini, Stefano, Jr., *Un conservatore rurale della nuova Italia*, 2 vols. (Bari 1926), Coletti, Francesco, "Stefano Jacini e l'agricoltura italiana" in his edition of Jacini's *L'inchiesta agraria* (Piacenza 1926) p. v-ii.

JACKSON, ANDREW (1767-1845), seventh president of the United States. Jackson had served short terms in Congress as representative and senator from Tennessee (1797-98) and six years as a justice of the state Supreme Court (1798-1804) when his defeat of the British at the battle of New Orleans on January 8, 1815, made

him a national hero. He added to his fame by his invasion of Florida in 1818 at the outbreak of the Seminole Indian War and by his high handed treatment of the Spanish authorities there. From 1823 to 1825 he was again a senator from Tennessee. His personal popularity and violent and contentious temper rather than his championship of any clearly defined political principles made him the most conspicuous embodiment of the spirit of discontent which came to a head after the panic of 1819 and of a rising demand in the west for general political and governmental reform. His presidential candidacy was aided by dissensions in the cabinet of President Monroe and by a popular demand for the abolition of the congressional caucus, which in the absence of a national convention system had assumed to make nominations. In 1824 he received a plurality of the electoral votes but was defeated in the House of Representatives by John Quincy Adams, who received the votes of the supporters of Henry Clay. Jackson accepted the result as constitutional but spread the charge of a corrupt bargain on the part of Clay and was acclaimed as the predestined candidate of the Democrats in 1828. In that year he was triumphantly elected and at once instituted a partisan purge of the federal civil service and pressed a demand for economy, which included by 1835 the virtual extinction of the national debt. The other outstanding episodes of his two administrations (1829-37) were his vigorous resistance to nullification in South Carolina; his attack upon the second Bank of the United States, whose recharter he prevented; his refusal to support the Supreme Court in its adjudication of the rights of the Cherokee Indians; and an order directing specie payments for public lands which contributed directly to the panic of 1837. A resolution by the Senate censuring him for his course with the bank and its deposits was met by protest which arraigned the Senate and stoutly defended his executive prerogative. In his insistence upon "the people" as the source of political power and his espousal of the theory of majority rule his conception of democracy accorded with that of Jefferson, but the people to him meant the masses and the importance which Jefferson attached to the agricultural class as the foundation of a democratic society had no special place in his thought. With none of the cultural background or intellectual interest of Jefferson, he interpreted public opinion by his intuitions and desires, regarded his own understanding of the constitution as of equal authority with that of

the courts and as an executive showed himself an autocrat. The antimonopoly feeling of the time had his sympathy, but his financial policy showed little understanding of either banking or credit functions or the needs of an expanding industrial and commercial order. His hold on the popular imagination of his own and later generations may be attributed to his ruthless vigor as military leader and champion of the people, to his devotion to the union in opposition to the disintegrating influence of the doctrine of state rights and to his combination of high political principles with a realistic playing of the political game.

WILLIAM MACDONALD

*Consult:* Catterall, R. C. H., *Second Bank of the United States* (Chicago 1903); Turner, F. J., *Rise of the New West, 1819-1829*, American Nation series (New York 1906); MacDonald, William, *Jacksonian Democracy, 1829-1837*, American Nation series (New York 1906); Bassett, J. S., *The Life of Andrew Jackson*, 2 vols. (new ed. New York 1916); *Correspondence of Andrew Jackson*, ed. by J. S. Bassett, vols. i-v (Washington 1926-31); Abernethy, T. B., *From Frontier to Plantation in Tennessee* (Chapel Hill, N. C. 1932).

**JACOBINISM.** This word may be used to describe a specific phenomenon of the French Revolution or to describe a widespread but rather loose and indefinite form of corporate faith and organization which indeed took its start from revolutionary France but which pervaded the whole western world for several generations. Jacobinism in this sense had for perhaps a hundred years the same sort of meaning which Bolshevism has today; that is, it was quite indiscriminately applied by political conformists to their opponents generally, and it had definitely dyslogistic overtones. The epithet Jacobins, drawn from their meeting place in the library of a Jacobin convent, was fastened by contemporary popular usage on the Société des Amis de la Constitution of Paris, a political club originating immediately in a caucus of radical Breton delegates to the Estates General and ultimately springing from the rich group life of the last decades of the old regime—salons, local academies, literary societies and Masonic lodges. The Paris society was founded by radical deputies who wished to create organized support for themselves outside the Assembly and soon came to include journalists, municipal politicians, professional men; in fact, anyone actively interested in what was to Frenchmen the new pursuit of politics. Similar clubs soon grew up in the provinces and were affiliated with the "mother

society" at Paris in a network admirably organized all over the country. The membership of these clubs was pretty uniformly middle class and respectable throughout the revolution, and it was recruited chiefly from merchants and professional men; at most it may be said that after the founding of the republic there was a slight relative increase in the number of shopkeepers and artisans. Proletarian these clubs almost never were, even at their fiercest. The total number of Jacobin clubs in France was probably between five and eight thousand; their total membership over the whole course of the revolution may have been close to a million, but during the Terror it can hardly have been much over one half that figure.

The Jacobins began as a pressure group similar in some ways to the Anti-Corn Law League or the Anti-Saloon League. Their network of affiliated societies, centralized through the Paris society, gave them access to all France. Their use of propaganda was highly modern and efficient. Newspapers were subsidized, pamphlets circulated through the mails, prizes for *civisme* offered to school children, revolutionary almanacs distributed, theaters encouraged to provide such patriotic spectacles as the Fall of the Bastille and the Death of Caesar. Direct pressure was brought to bear on elections both local and national. Candidates were pledged to carry out Jacobin measures in return for the club's support, opponents were shouted down or even terrorized—an easy matter in the direct primary assemblies—and an excellent political machine constructed. Few men were elected to the Convention without the support of their local club.

All this pressure was brought to bear in 1792 and 1793 toward the establishment of a republican form of government, universal manhood suffrage, equality before the law, a rough economic equality to be attained by the free play of individual competition and the voluntary restraints of republican morality, universal education and separation of church and state—substantially the ideology of eighteenth century rationalism. These aims would seem to have been implicit among the Jacobins from the very start and to have been their real purpose even in 1790. Official historians of the revolution, however, like Aulard and Mathiez, have considered the anticlerical republican program of the Jacobins a product of conservative stupidity and the European war. Many of the early Jacobins were indeed Girondins in sympathy and believers in *laissez faire*, moderation and local self-

government. Pure Jacobinism was authoritarian, radical and strongly in favor of centralization. Yet there was much pure Jacobinism, especially anticlericalism, among the early clubs and by July, 1793, avowed Girondists and other moderates had been driven from the clubs.

The Jacobins, however, were more than a pressure group or a political party. They succeeded in investing their rather commonplace principles—even in the late eighteenth century they were commonplace—with the satisfying glories of religion. Quite early in the movement the club meetings took on a ritualistic touch. Club premises, at first adorned with a bust or so, Voltaire, Rousseau, Franklin, Brutus, accumulated an extraordinary number of sacred objects. Revolutionary hymns were sung and responsive readings were followed by moral sermons. The young were taught in revolutionary Sunday schools. Civic processions, civic festivals and love feasts, initiated and administered by the clubs, were perhaps too consciously worked out as ritualistic substitutes for Christianity. The details of this Jacobin ritual were a hodgepodge of misapplied Roman history, Rousseauistic sentimentalism, eighteenth century rationalism, downright borrowings from Catholic practise and even immemorial folk custom. Too crude for men of taste, too unreal for the masses, this ritual seems to have been real for the Jacobins. Their meetings displayed many phenomena which the psychologist must recognize as the phenomena of religious belief: violent intolerance of slight dogmatic differences, consciousness of being persecuted, total want of a sense of humor, a contagion of mass emotion, a conviction that opponents are not merely in error but in a state of sin. It is this religious exaltation that would seem to explain the Terror. There is nothing in the social origins or in the specific grievances of the Jacobins adequate for such an explanation. No doubt the constant fear of royalist and foreign enemies augmented the violent manifestations of this faith; but the faith itself, the force behind the "Republic of Virtue," must be traced in the complex fabric of eighteenth century thought and emotion.

The Jacobin clubs during the Terror were hardly more than places for revolutionary worship. No doubt the revolutionists spurred each other on in club meetings and maintained their spiritual energies. But from a third to a half of the members of many clubs were functionaries of the new government. Naturally enough the clubs ceased their old activities as pressure

groups. After the autumn of 1793 they no longer resisted a government of which they formed the rather narrow base. Such political discussion as there was took place in the clubs. Elections were supplanted by *épurations* at the dictate of the representative on mission, and here again the clubs stood for the people. Some minor administrative work was done by the clubs—gathering saltpeter, policing the market, maintaining the maximum on prices. After Thermidor the clubs died out fairly rapidly. They did not protest the fall of Robespierre—indeed by 1794 they accepted anything done at Paris. But they were inconvenient to the Thermidorians, since the earnest Jacobin took liberty, equality, fraternity too literally for the profiteers, the tired ordinary bourgeois and the peasants of the new regime. By 1795 the remaining clubs had been closed. Many ex-Jacobins were to enter the civil service of the emperor. From Fouché, who became Napoleon's indispensable minister of police, to Picqué, who had the relatively humble post of *chef de contentieux* in the imperial lottery, the *conventionnels* did but set the lead for hundreds of Jacobins in the provinces. Former revolutionists were as indispensable to Napoleon's civil administration as to his army.

After the first spontaneous delight with which most of the world hailed the beginnings of the French Revolution, the extraordinary radiation of that movement was largely the work of Jacobins in France and out. Jacobin clubs were immediately set up in territories conquered by republican armies—Nice, Savoy, Italy, Belgium, the Rhineland. French soldiers and civil servants mingled with a number, never very large, of natives. In England societies like the London Revolution Society were already in existence, although somnolent. The French Revolution gave a great impetus to groups working for a reform of Parliament and led to the formation of Hardy's London Corresponding Society, a club largely recruited from artisans, to the Society of Friends of the People—a highly Gallic name—and to many other such societies in London, in the provinces and in Scotland. There was a certain amount of centralization and common deliberation but nothing like the Jacobin network in France. In the United States, democratic, sometimes republican or constitutional, societies sprang up in pretty close imitation of the French and a system of affiliation and correspondence was worked out.

There was unquestionably a certain amount of mutual intercourse between French Jacobins

and their sympathizers in Europe and America. International Jacobinism was never a conspiracy, although to many a conservative it seemed one; and Frenchmen did not swarm secretly into foreign countries supplied with armfuls of gold to build up political clubs, although that too was charged against them. But travel was relatively easy, and Jacobinism aspired to be a world religion. Foreigners like Clootz, Paine, Pigott and Georg Forster played various roles in French revolutionary politics. Frenchmen descended in numbers into Nice, Savoy and the Rhineland. Margarot, who figures prominently in the English and Scottish clubs, was a Frenchman. The club of Charleston, South Carolina, which actually got itself affiliated with that of Paris, contains many French names, not all of which seem to be those of Carolina Huguenot families. The role of republican ambassadors, Genêt in America, Chauvelin in England, Bassville at Rome, is of course familiar. Correspondence was even more frequent than personal contact. The Paris society corresponded with several English societies until the war and sent a good deal of literature abroad. Finally, French political debates were abundantly reported both in English and in American newspapers and periodicals.

The similarities between French clubs and clubs outside France were striking. The phraseology of the addresses issued by American clubs, their abstract and grandiloquent prospectuses and preambles, sound as though they were translated from the French, which in part they undoubtedly were. In Germany and Italy the same was true, although there the clubs were the fruits of conquest. In England, as might be expected, this sort of imitation was much less frequent, and on the whole the English revolutionaries employed a vocabulary of their own. The Jacobin ritual was not without its imitators. At Boston to "impress the tender minds of the rising generations with the precepts of equal liberty" civic cakes inscribed "Liberty and Equality" were distributed to the youth of the town assembled in State Street. The Roman society took on the impressive if exacting title of *Gli Emuli di Bruto*. Such clubs resorted to methods of bringing pressure to bear on public opinion familiar to students of French Jacobinism. The club at Mainz kept two registers, one bound in red with tricolor edges for patriots, the other bound in black and equipped with chains for those who opposed the revolution. Naturally not a soul signed the black book. One can even distinguish in the following statement from the

Democratic Society of Chittenden County, Vermont, that mixture of fear and assurance characteristic of French Jacobin functionaries: "We are eighty-four citizens—amongst whom are eight members of the Legislature—all the General Officers of the County—the High Sheriff—the majority of the Bench—and all the Bar, except two, *whom prudence has as yet prevented from asking for admission.*" The membership of the clubs outside France although including many humble men seems never to have been without prosperous and distinguished elements. The Rhenish clubs were filled with professors, physicians and merchants. If the English movement numbers poor men like Hardy, it includes clergymen like Tooke; scientists like Priestley; and even noblemen like Grey, Daer and Stanhope. In the Philadelphia society are to be found such names as Rittenhouse, Biddle and Dallas. Finally, political passions, especially in America, were kept at a white heat by the clubs. Washington himself, who blamed them for the Whisky Rebellion, lost his temper with them and spoke of them scornfully as "certain self-created societies" attempting to undermine the government.

These societies, at least in England and in America, were unquestionably influenced by local and national aims and in part twisted French ideas and French fashions to suit themselves. In England parliamentary reform was a specific goal, and the rights of man might come after the rights of Englishmen. In America the quarrel between Hamiltonians and Jeffersonians can certainly not be stated wholly in terms of French politics. The Jeffersonians, for instance, were states' rights men, the French Jacobins ardent centralizers. The agrarian discontent in America was a frontier discontent and a powerful element in the Jeffersonian party. French Jacobinism was almost wholly an urban product. Yet when all these qualifications are made, one is left with a definite impression that Jacobinism in the 1790's was a genuine international movement; that in the various countries it touched it did have a roughly similar program, employed a similar technique of political action, attempted through a similar ritual to create a political faith. No doubt selfish men in all countries exploited this enthusiasm for quite unphilosophical purposes of their own. But for most of the Jacobins in the western world the faith was real and promising. Not until the best days of the Second International was so widespread and so cosmopolitan a movement to appear in Europe. And

Marxian socialism even before the Russian Revolution lacked the freshness and hope of Jacobinism.

France herself began the destruction of this international Jacobinism. The Convention and the Jacobin clubs abandoned their eighteenth century cosmopolitanism for an aggressive policy of national expansion. But France was not alone in feeling this new, democratic union of all men in a patriotic emotion. Triumphant Jacobinism stirred up the new nationalism in the countries it had conquered. Wordsworth, Fichte, Cuoco, to take but a few examples, began a search for a principle to justify their distrust of the once admired revolution. They all ended in a violent and extreme repudiation not merely of Jacobinism but of the ideology, the aspirations, even the fashion and the diction of the century which had produced Jacobinism. By 1815 Jacobinism had everywhere been driven underground—even in America, where Jeffersonian democracy was becoming Jacksonian democracy and the frontier had lost touch with France.

In France indeed Jacobinism survived to appear again at crucial moments in French history. As a type the Jacobin with his anticlericalism, his dislike of the overrich, his moral austerity, his distrust of any government actually existing, his reliance on the individual in economic matters, has existed outside France. If the word is sufficiently diluted it may be used to cover most nineteenth century European republicans. As a movement Jacobinism after having been cut short by Louis Philippe's acceptance of the throne in 1830 did much to create the Revolution of 1848. Here and again in 1871 Jacobinism sometimes collaborated and sometimes found itself at odds with socialism. Jacobinism was characterized by political tactics which came very near direct action, a group consciousness very near class consciousness, a fighting tradition, a devotion to the centralized, bureaucratic state; and Jacobins no doubt helped develop these aspects of modern socialism. But in its support of the small owner, peasant or shopkeeper and in its fervid nationalism it is clearly distinguished from socialism. Nineteenth century liberalism too owes something to Jacobinism, to its confidence in the possibility of a better earthly life for all men, to its belief in the career open to talents, to its insistence that law rests ultimately on morals rather than on power. But the liberal is shocked at the Jacobin's absolute state, his contempt for history, his love of political violence, his intolerant anticlericalism, his disregard for

the rights of minorities. Englishmen like Mill and Acton deny that Jacobinism is liberal and regret that on the continent liberalism is corrupted by Jacobinism. Traditionalism, that of a de Maistre or a Metternich, may seem the complete antithesis of Jacobinism. But Comte's admiration for de Maistre is no mere whim. Both traditionalism and Jacobinism attempt the application of moral absolutes to politics. The absolutes are indeed different, but the temper is the same. Both are authoritarian rather than libertarian, and both are unwilling to admit that experience is real enough to modify their theories. Today Jacobinism, if not dead in France, has achieved its political ends, many of its social and economic ends—France is a land of rough economic equality, but also of economic individualism—has seen church and state separated, has in short turned conformist. The old Jacobin tactics of resistance, the Jacobin methods of pressure, the Jacobin spirit, have passed to the extremists, to the monarchists and the communists.

CRANE BRINTON

See: FRENCH REVOLUTION, CLUBS, POLITICAL.

Consult: FOR JACOBINISM IN FRANCE DURING THE REVOLUTION: Caiden, L. de, *La province pendant la révolution: histoire des clubs jacobins* (Paris 1929); Brinton, C., *The Jacobins: an Essay in the New History* (New York 1939), with bibliography of monographs on local clubs p. 281-98, Aulard, F. V. A., *La société des jacobins*, 6 vols. (Paris 1889-97); Leulliot, P., *Les jacobins de Colmar*, Université de Strasbourg, Faculté des Lettres, Publications, vol. ix (Strasbourg 1923).

FOR JACOBINISM AS A WORLD MOVEMENT: Warren, C., *Jacobin and Junto* (Cambridge, Mass. 1931); Hazen, C. D., *Contemporary American Opinion of the French Revolution*, Johns Hopkins University, Studies in Historical and Political Science, extra vol. xvi (Baltimore 1897) p. 139-307, Rydjord, J., "The French Revolution and Mexico" in *Hispanic American Historical Review*, vol. ix (1929) 66-98, Birley, R., *The English Jacobins from 1789 to 1802* (London 1924); Meikle, H. W., *Scotland and the French Revolution* (Glasgow 1912), Brown, P. A., *The French Revolution in English History* (London 1918), Hazard, P., *La Révolution française et les lettres italiennes, 1789-1815* (Paris 1910); Scandone, F., "Il giacobinismo in Sicilia, 1792-1802" in *Archivio storico siciliano*, vol. xliii (1921) 279-315, and vol. xliiv (1922) 266-361; Stern, A., *Der Einfluss der französischen Revolution auf das deutsche Geistesleben* (Stuttgart 1928); Gooch, G. P., *Germany and the French Revolution* (London 1920); Jaurès, J., *Histoire socialiste de la Révolution française*, ed. by A. Mathiez, 8 vols. (Paris 1922-24) vol. v; "Die Verschwörung des Martinovics" in *Ungarische revue*, vol. i (1881) 11-29.

JACOBS, JOSEPH (1854-1916), Anglo-Jewish historian. Jacobs was born in Sydney, New South Wales, and was educated at Cambridge and Ber-

lin. In 1887 he assisted in organizing the Anglo-Jewish Historical Exhibition which led to the founding of the Jewish Historical Society of England, of which he was one of the first presidents. In 1900 he went to America to edit the *Jewish Encyclopaedia* and he was mainly responsible for its sections on anthropology and the history of the Jews in England. He was for several years professor of history in the Jewish Theological Seminary of New York. In 1888 he toured Spain, surveying material on the history of the Jews in that country and producing a masterly account of his discoveries, which was limited in value because he failed to see many original documents owing to the shortness of his stay in the country. Jacobs' greatest historical work, embodied in articles in the *Jewish Encyclopaedia*, the *Jewish Quarterly Review* and the *Transactions* of the Jewish Historical Society of England and his book *Jews of Angevin England*, concerned the Jews in England before the expulsion of 1290. Despite the fact that he was often careless, had an inadequate knowledge of Hebrew and was given to conjectures inspired by patriotic prejudices he produced work of great value based on long neglected original sources. The results of his labors, still not superseded, are the basis of the known Jewish history of pre-expulsion England. His *Jewish Contributions to Civilization*, although an incomplete fragment of a larger work, is a brilliantly suggestive essay.

Aside from his work in Jewish history Jacobs made a number of interesting anthropological studies of Jews and important contributions to the study of fairy tales and the migration of fables. From 1889 to 1900 he was editor of *Folklore*, the journal of the Folk-lore Society. As editor of the *American Hebrew* from 1906 until his death and in other activities he was a leading figure in contemporary communal affairs, representing on the whole a conservative viewpoint.

Cecil Roth

*Important works:* *The Jews of Angevin England* (London 1893); *An Inquiry into the Sources of the History of Jews in Spain* (London 1894); *Jewish Contributions to Civilization* (Philadelphia 1919); *Bibliotheca Anglo-Judaica*, in collaboration with Lucien Wolf (London 1888); *Studies in Jewish Statistics* (London 1891).

*Consult:* Sulzberger, Mayer, in *American Jewish Historical Society, Publications*, vol. xxv (1917) 156-73, with bibliography; Memorial addresses in *Jewish Historical Society of England, Transactions*, vol. viii (1915-17) 129-52, with bibliography.

JACOBUS. See FOUR DOCTORS.

JACOBY, JOHANN (1805-77), Prussian politician. Jacoby, who throughout his political career continued to practise medicine in his native town of Königsberg, was the outstanding spokesman of East Prussian liberalism, which during the decade preceding 1848 set out, under the spell of Aufklärung and especially of Kantian ideology, to constitutionalize the Prussian monarchy and state and to transform Prussian subjects into free citizens. His pamphlet, *Vier Fragen beantwortet von einem Ostpreussen* (Mannheim 1841), in clearly formulating the demand that Frederick William IV grant the written constitution promised by his father at the close of the War of Liberation, gave a decisive impetus to the movement which culminated in the Revolution of 1848 and the establishment of a constitutional monarchy. As a result of the prosecutions in which the pamphlet involved him Jacoby's prestige was firmly established as one of the outstanding champions of aggressive liberalism. Essentially, however, a doctrinaire, tending to an almost religious fanaticism and to a faith in the categorical imperative as the sovereign rule of political as well as moral conduct, he was not skilled in the more immediate problems of political statesmanship and tactics. Moreover by the time of the revolution he had come to realize the greater importance of social problems as compared with purely political ones. His greatest practical influence was exerted during 1848-49, when as a member of the Prussian National Assembly he played a leading part in formulating the program of the Democrats and advised the Assembly to resist to the utmost the threatened coup d'état. As a member of the delegation sent by the Assembly to the king he expressed his opinion that it had "always been the misfortune of kings not to want to hear the truth." This unguarded outburst tended to prejudice him in the eyes of less thoroughgoing liberals and caused his influence to wane. Jacoby still held fast, however, to his faith in the ultimate victory of democracy in Germany and to his international ideal of a "union of free democratic states." He refused to recognize the Bismarckian empire, since it had been brought about by force without the consent of the people. In 1872 Jacoby joined the Social Democratic party but declined to take an active part in parliamentary life.

GUSTAV MAYER

*Consult:* *Gesammelte Schriften und Reden von Johann Jacoby*, 2 vols. (2nd ed. Hamburg 1877); Mayer, G., "Der Verfasser der 'Vier Fragen'" in *Frankfurter*

*Zeitung* (March 8, 1927) 1-3; Adam, R., "Johann Jacobys politischer Werdegang 1805-40" in *Historische Zeitschrift*, vol. cxliii (1930) 48-76; Meinecke, F., *Weltbürgertum und Nationalstaat* (7th ed. Munich 1928) p. 376-79; Schay, R., *Juden in der deutschen Politik* (Berlin 1929) p. 139-50.

**JAHN, FRIEDRICH LUDWIG** (1778-1852), German patriot. Jahn together with Ernst Moritz Arndt was the first herald of national democracy in Germany. He traveled through Germany investigating language and folklore and in 1810 published his *Teutsches Volkstum* (new ed. Leipsic 1817), in which he maintained that national peculiarities are indestructible and that foreign interference should be resisted.

In his grief over Germany's humiliation during the Napoleonic wars Jahn strove to awaken the physical and moral energies of the people. He found the means for accomplishing this in the development of physical education. Stimulated by Pestalozzi's educational ideas he grasped the fact that physical exercises are the means of training the perfect man. His aim was not only to steel the body but to form the will and develop a feeling of fellowship. In 1811 he established the Hasenheide athletic grounds near Berlin, where he laid most stress on those exercises which called for practical use and action. Like vom Stein, Jahn recognized the removal of social barriers as of utmost importance for the awakening of national feeling. He thus aimed to unite young people of all classes on the playground for common service, and the grey linen dress which his followers adopted served as a simple uniform suited to wipe out class differences. He was convinced that the community of gymnastics would provide the basis for a common national spirit.

Jahn's exercises and ideas were closely knit up with old Germanic traditions and folklore. He inveighed coarsely against the Jews and all foreigners and his followers adopted a harsh manner. For this reason he aroused wide antagonism and soon too the government came to suspect him as a demagogue and corrupter of youth. The playgrounds were closed and until the Revolution of 1848 gymnastics were forbidden throughout Germany. Jahn himself was arrested and forced to withdraw from public life. The Revolution of 1848 brought him into the Frankfort Assembly and he has since been acclaimed as a hero of the Prussian regeneration.

FRANZ SCHNABEL

*Works:* *Werke*, ed. by C. Euler, 2 vols. (Hof 1883-87).  
*Consult:* Euler, Carl, *Friedrich Ludwig Jahn* (Stuttgart

1881), Friedrich, J., *Jahn als Erzieher* (Munich 1895); Eckardt, Fritz, F. L. Jahn, *eine Würdigung seines Lebens und Wirkens* (Dresden 1924); Neuendorff, Edmund, *Turnwater Jahn, sein Leben und Werk* (Jena 1928); Leonard, F. E., "Friedrich Ludwig Jahn and the Development of Popular Gymnastics in Germany" in *American Physical Education Review*, vol. x (1905) 1-19.

**JAKOB, LUDWIG HEINRICH VON** (1759-1827), German economist. Jakob taught in succession philosophy and economics at the University of Halle. In 1806 he was invited to occupy the chair of political economy at the University of Kharkov. In 1816 he returned to Halle, where he spent the remainder of his life.

A disciple of Immanuel Kant and of Adam Smith, Jakob attempted to combine the theories of both. He accepted the principles of economic liberalism, but with Kant asserted the primacy of ethical considerations and assigned to the state a more positive function in furthering the development of society. Jakob recognized the relative character of the principle of free trade and thus anticipated the stage theory of List. While in Russia Jakob carefully studied the efficiency of the serfs and his conclusions anticipated those of later writers on the economy of high wages. His writings on monetary conditions in Russia are of particular value because of their suggestive treatment of foreign exchanges, the effects of paper money and related problems.

V. GELESNOFF

*Important works:* *Theorie und Praxis in der Staatswirtschaft* (Halle 1801); *Grundsätze der Nationalökonomie, oder Theorie des Nationalreichthums* (Halle 1809, 3rd ed. 1825), *Grundsätze der Polizeigesetzgebung und der Polizeianstalten* (Kharkov 1809), *Über die Arbeit leibneger und freier Bauern in Beziehung auf dem Nutzen der Landesgenüther, vorzüglich in Russland* (St. Petersburg 1815); *Über Russlands Papiergeld* (Halle 1817); *Die Staatswissenschaft theoretisch und praktisch dargestellt und erläutert*, 2 vols. (Halle 1821, 2nd ed. 1837).

*Consult:* Roscher, Wilhelm, *Geschichte der Nationalökonomik in Deutschland* (Munich 1874) p. 686-96; Pototzky, Hans, L. H. von Jakob als Nationalökonom (Strasbourg 1905).

**JAKŠIĆ, VLADIMIR** (1824-99), Serbian statistician. Jakšić studied statistics under Farlati at Tübingen and economics under Rau at Heidelberg. In 1847 he entered the Serbian Ministry of Finance and from 1852 to 1862 taught economics and commercial law in the *lycée* in Belgrade. When the government was finally persuaded to set up an independent department of statistics in 1864 Jakšić became its first director; he re-



maintained its leading spirit for over two decades.

Jakšić viewed statistics as an indispensable tool in the rational administration of a country and devoted the major part of his life to the task of collecting and interpreting statistical material bearing on the social and economic development of Serbia. In his *Predlog o ustroju i programu državne statistike* (Project of the organization and program of government statistics, Belgrade 1850, 2nd ed. 1858) he attempted on the basis of statistical material, part of which he had collected in his studies and part in his extensive tours of European countries, to discover the factors leading to the decline in the national well being. He also formulated in this original work a comprehensive program of social and economic reform for the purpose of ameliorating the political and economic status of his country. Jakšić is credited with the organization of a systematic meteorological observation service. His interest in meteorology may be traced to Rau, who demonstrated the practical value of the knowledge of climatic conditions in agriculture.

JOSEF MATL

*Other works:* *Državopis Srbije* (Statistics of Serbia), 2 vols. (Belgrade 1856-57), *Statistička zbirka iz srbiskih krajeva* (Statistical collection from districts of Serbia) (Belgrade 1875), *Postanak i razviće štampe u Srbiji* (Origin and development of the Serbian press) (Belgrade 1873). Jakšić was also responsible as editor and important contributor for 13 vols. of the official *Državopis Srbije* (Belgrade 1863-84).

*Consult:* Jovanović, B., in *Srpska Kraljevska Akademija, Godišnjak* (Annals), vol. xiii (1899) 246-48; *Srpsko Učeno Društvo, Glasnik* (Messenger), vol. lxxi (1890) 291-325.

JAMÁL U'D-DÍN AL-ÁFGHÁNÍ (1838 or 1839-97), Moslem reformer. Jamál was born probably either in Afghanistan or in Persia. He studied at the famous madrasah of Bokhara, where he acquired a remarkable knowledge of all the Moslem sciences and especially of mediæval Moslem theology and philosophy. He then traveled widely through the Islamic countries, visiting India, Arabia and Turkey; in 1871 he settled in Egypt, where he taught at the university of Al-Azhár. There he won considerable influence over the youth of Egypt identifying himself with the religious reform and the incipient Young Egyptian movements; as a result he incurred the dislike of both the orthodox clergy and the European powers and was forced to leave Egypt in 1879. After three years in India he lived from 1882 until about 1889 in London, Paris and St. Petersburg, writing for the leading newspapers. In Paris he published, together with

Muhámmad 'Abdu, who had been his pupil and follower at Al-Azhár and became later the famous Mufh' of Egypt, an Arab weekly, *al-'Urwatü l-Wuthqá*. This journal criticized English policy in Moslem countries, and although only eighteen numbers were published its influence was widespread. From 1889 to about 1891 Jamál lived in Persia, where he worked intensively, arousing a reform movement which subsequently gave rise to the Persian revolution. The last years of his life were spent in Constantinople on a pension from Abdul-Hamid, the Ottoman sultan, who was interested in Jamál because of his own pan-Islamic activities.

Jamál was one of the earliest thinkers and leaders of the nineteenth century Moslem and Asiatic renaissance. He recognized the threat to the East inherent in the material superiority of the West; believing, however, that Islam was not a rigid system but one capable of adaptation to existing spiritual and temporal needs, he held that the slumbering forces of the Islamic world could be awakened to new life by the devoted efforts of the younger generation of Moslems. He urged the union of all Islamic states under a single caliphate capable of liberating them from European exploitation and influence. He also expounded the doctrine that Islam aims at popular government.

His vast knowledge, his incessant endeavors to revive the splendor of Islam through the awakening of Moslem youth and his courageous stand against European aggression and oriental despotism made him extremely influential and he may be rightly called the father of all subsequent renaissance, pan-Islamic and nationalistic movements in Egypt and in the Moslem East. He was, like the European figures of the early Renaissance, scarcely conscious of the implications of the new era; nevertheless, he sowed in many lands the seeds of change which a few decades later blossomed in a way unforeseen and perhaps undesired by the sower.

HANS KOHN

*Consult.* Browne, E. G., *The Persian Revolution of 1905-1909* (Cambridge, Eng. 1901) p. 1-30, 401-04; Kohn, Hans, *Geschichte der nationalen Bewegung im Orient* (Berlin 1928), tr. by M. M. Green (London 1929) p. 38-40, 179-81, 320-21.

JAMES I (1566-1625), king of Great Britain and Ireland and king of Scotland as James vi. James was the son of Mary Queen of Scots by her second husband, Henry, Lord Darnley. He succeeded to the Scottish throne as an infant,

through the enforced abdication of his mother. His governance of Scotland was a grim school of experience with a turbulent nobility on one side and a domineering priesthood on the other. Its effect upon him is set out in the *Basikon Doron* (Edinburgh 1599), a treatise on the duties of kingship which he published for the instruction of his elder son, Henry, and in his *True Law of Free Monarchies* (Edinburgh 1598), which he published anonymously. He argued that kings were chosen by God to govern and that the duty of subjects is merely to obey. The king is above the law but although responsible to God alone he should concern himself to obey it unless the well being of his subjects demands otherwise. In his view even a wicked king is entitled to the allegiance of his people; only God may punish him.

In 1603 the death of Elizabeth brought him to the English throne. He showed little insight into the character of his position. Impressed by the despotism of the Tudors, he did not realize its basis in popular consent. He was led accordingly by his high notions of prerogative into quarrels with Parliament, the Puritans, the Roman Catholics and, in the person of Sir Edward Coke, the courts of law. James' mistake was not to realize, first, that he was a foreigner to his new subjects and, second, that the whole character of parliamentary institutions was changing. His speeches to his different parliaments all show an unwillingness to recognize the new atmosphere. He took the view that the king is the shepherd of the flock, the father of his people; and he sought to make of Parliament rather a body to advise and support his policies than one with authority to initiate. Had he been wise and successful he might have enforced his doctrine, but he was weak and vacillating and given to the cultivation of favorites who lacked the ability necessary for government. He was, however, a man of considerable learning, not without foresight and averse to extremes. His learning is manifested with some distinction in his *Apology for the Oath of Allegiance* (London 1607), in which he defended the legislation which followed upon the discovery of the Gunpowder Plot. A long controversy followed his book, in which the protagonist on the other side was the eminent Jesuit Bellarmine. James maintained with much ability the danger to monarchical sovereignty of the allegiance claimed by popes from their subjects.

HAROLD J. LASKI

*Works: The Works of the Most High and Mightie*

*Prince, James*, ed. by Bishop Montague (London 1616); *The Political Works of James I*, ed. by C. H. McIlwain (Cambridge, Mass 1918).

*Consult:* McIlwain, C. H., Introduction to his edition of James' works, Laski, H. J., *The Foundations of Sovereignty* (New York 1921) p. 292-314; Figgis, J. N., *The Divine Right of Kings* (2nd ed Cambridge, Eng. 1914) p. 137-41; Trevelyan, G. M., *England under the Stuarts* (15th rev. ed. London 1930) chs. III and IV, Montague, F. C., *History of England from the Accession of James I to the Restoration 1603-1660*, Political History of England, ed. by W. Hunt and R. L. Poole, vol. VII (London 1907) chs. I-V.

JAMES OF VITERBO (Giacomo Capocci da Viterbo) (c. 1255-1308), Italian scholastic theologian and political theorist. James of Viterbo was an Augustinian monk and a pupil of the famous Augustinian general Aegidius Romanus. He was educated in Paris and in 1300 became rector of the Studium Generale of the Neapolitan Augustinians. In 1302 through the favor of King Charles II of Naples and of Boniface VIII he was appointed first archbishop of Benevento and a few months later archbishop of Naples, in which capacity he remained until his death. Most of his theological writings are still unpublished, but his tract on ecclesiastical politics, *De regimine christiano*, has recently become especially well known. Recognized as the oldest scientific treatment of the Catholic doctrine of the church and of the papacy, the *De regimine* was written in the summer of 1302 in the midst of the struggle between Boniface VIII and Philip the Fair of France. It belongs among those curialistic writings which paved the way for the issue of the bull *Unam sanctam* on November 18, 1302, but it shows hardly a trace of controversial writing. It is divided into two sections, "De regni ecclesiastici gloria," in which the author analyzes the nature of Christian society, of the state and of royal power, and "De potentia Christi regis et sui vicarii," in which he develops his ideas concerning the authority of the papacy. By a unique combination of the mystical Augustinian notion of the divine state with the natural law doctrines of Aristotle he arrives at the idea that the true and perfect state is the church. The church is the social—which James does not distinguish from the political—community of mankind, the universal *res publica*. The pope as head of the church and as Christ's vicar inherits the spiritual royal power of Christ, which includes both ecclesiastical and temporal authorities. The emphasis of James' discussion of the papacy is placed throughout not upon its specifically sacerdotal attributes but upon its sovereignty, a sovereignty

in which religious and mystical elements are inseparably fused in the mediaeval manner with temporal and political.

In its conclusions James' *De regimine christiano* bears a close relation to the slightly earlier *De ecclesiastica potestate* of his teacher Aegidius Romanus. But without sacrificing Aegidius' extreme position with regard to the temporal authority of the papacy James consistently shows more deference than does Aegidius to the secular state. Aegidius holds that the authority of the prince is unlawful and evil unless derived from the church; James recognizes a natural and human justification for the existence of the state irrespective of its relation to the church. The only perfect authority is, however, the spiritual regal power of the absolute pope, whose kingdom is superimposed upon all states. He is the king of kings and all human institutions must submit to him, who alone can bestow the divine elements necessary to complete the human order. James' tract had considerable influence on subsequent writers, particularly upon those who participated in the conflict between Pope John XXII and Louis of Bavaria, notably Alexander of St. Elpidio and Alvarus Pelagius.

RICHARD SCHOLZ

*Works: Le plus ancien traité de l'église: De regimine christiano*, ed. by II. H. Arquillière (Paris 1926).

*Consult: Scholz, Richard, Die Publizistik zur Zeit Philipps des Schönen und Bonifaz VIII, Kirchenrechtliche Abhandlungen*, vols. vi-viii (Stuttgart 1903) p. 129-52; Mariani, Ugo, *Scrittori politici agostiniani del secolo XIV* (Florence 1927) p. 64-99, 179-212; Rivière, Jean, *Le problème de l'église et de l'état au temps de Philippe le Bel*, Université Catholique de Louvain, *Spicilegium sacrum lovanienae*, Études et documents, no. viii (Louvain 1926) p. 145-48, 228-51; Carlyle, R. W. and A. J., *History of Mediaeval Political Theory in the West*, 5 vols. (Edinburgh 1903-28) vol. v, p. 409-17; Cogliani, V. T., "Giacomo Capocci e Guglielmo de Villana" in *Rivista d'Italia*, vol. xii, pt. II (1909) 430-59.

JAMES, WILLIAM (1842-1910), American psychologist and philosopher. James, who had the cultural advantages which prosperity provides, considered his early education, which was desultory and spread over schools in France, Switzerland and the United States, as worthless. The most important influence upon his childhood and youth was his father, Henry James the elder, whose idiosyncratic speculations about man and nature derived from Swedenborg constituted the permanent intellectual atmosphere of the Jamesian household. Combined with them was an antisectarian liberalism in religion, a per-

fectionism in politics and a general utopianism in social outlook.

In 1865 James interrupted his scientific studies at Harvard to go with Agassiz to the Amazon, but finding the climate bad for his health and the work not to his liking he returned to continue his studies. After a term he went to Germany, where he spent eighteen months in the study of medicine and in a struggle with a depression so acute as to lead to notions of suicide. When he resumed his schooling at Harvard he was still ill. He obtained his medical degree but could not practise. During this period he fell into a phobia with which was associated the doctrine of materialistic determinism. All his studies in the sciences had made the doctrine seem logically and practically inevitable; as applied to himself it made him afraid. A reading of Renouvier on free will started a train of thought of which all his subsequent work was elaboration and development. From that time on his health improved.

After a few years as instructor of anatomy and physiology at Harvard, James (from 1875 onward) taught psychology and philosophy. His treatment transformed both subjects from "mental and moral philosophy," verbal, abstract and related neither to living experience nor to the realities of nature and human nature, into specific, concrete, vital and new observations of the qualities of men and the nature of things. The general view which these observations comprise cannot be called a system. They presume rather an attitude of mind and a method and the perspectives of the universe and the insight into human behavior which the attitude defines and the method enables. The attitude rejects the closed, exclusive, self-consistent unity which systems require. It permits an openness to every item of experience, an acknowledgment that every event or belief or opinion which presents a claim to reality or truth has the right to make its claim good if it can, at its own risk. It is an empirical attitude, but the empiricism is radical; no idea, no event, no thing or relation is rejected or classified a priori. Its status is eventual; it receives its chance to make good or fail. The method, which James called pragmatism, is the process or technique of making good or failing. It is a summary of the observation that throughout human experience the reality or illusoriness of things and ideas, their goodness or badness, their truth or falsehood, are not primary but eventual; not the stations or qualities they are born with, but the positions and powers they

win to—the accumulation of their consequences, not the expenditure of their endowment.

The world we live in consequently is for James a world of change and chance, of plurality, variety and variation, of chaos and novelty and struggle. He sees the laws of nature not as eternal principles but as acquired and changing habits of things. He sees the qualities of men as variables born of chance, enabling them to live together in and with and upon their environment, or not. Every human trait operates as instrument in the individual's struggle to live; each is validated or condemned by its effects upon this struggle. The individual is the primary and fundamental factor, the *terminus a quo* and the *terminus ad quem* of societies. Societies are eventual; folkways and institutions are only acquired habits of grouping, changing and changeable. The process of history is the sum of the changes they undergo. These changes are always accomplished by individuals. Social like mental evolution is the flux of the selective action of the environment upon individuals and of the transforming action of individuals upon the environment. Individuals are data, like other spontaneous variations, and their interaction with society is similar. History takes new turns when individuals decide between alternatives. Nations, arts, religions, science itself, are all given direction and character by the free initiative, the effort and activity of individuals. Give individuality a chance, enable initiative and freedom, and life and growth are assured to society.

While the current trend of the physical sciences is largely in the direction of James' view of the nature of things, the social sciences have moved farther and farther from it. The application of the quantitative method has been extended from the processes of economics to the activities of the mind; measurement of intelligence paces measurement of interest rates and business cycles. In all the social sciences the statistician's correlations are sought as surrogates for the operative cause in social change. The abstract average is set up for study in place of the living individual and his concrete give and take with his living environment. For the abstractionism of this procedure, the Jamesian attitude and the pragmatic method, with their emphases on individuality, spontaneity and novelty, their stress on free initiative and real action in time, offer salutary correctives.

HORACE M. KALLEN

*Works:* For a complete bibliography see Perry, R. B., *Annotated Bibliography of the Writings of William*

*James* (New York 1920). His most important works are *Principles of Psychology*, 2 vols. (New York 1890); *The Will to Believe* (New York 1896); *Pragmatism* (New York 1907); *A Pluralistic Universe* (New York 1909); *Some Problems in Philosophy* (New York 1911).

*Consult.* *The Letters of William James*, ed. by Henry James, 2 vols. (Boston 1920); Flournoy, T., *La philosophie de William James* (Paris 1911), tr. by E. B. Holt and W. James, Jr. (New York 1917); *The Philosophy of William James, Drawn from His Own Works*, ed. by H. M. Kallen (New York 1925) p. 1-55, and ch. vi; Kallen, H. M., *William James and Henri Bergson* (Chicago 1914).

JAMESON, ANNA BROWNELL (1794-1860), British writer and feminist. Perhaps more than any other person of her time Mrs. Jameson exposed the great discrepancy between the traditional picture of the position of the Victorian middle class woman and the actual social and economic status of large masses of self-supporting middle and lower class women in the post-Napoleonic reconstruction period. From her own experiences as governess and later, after separation from her husband, as hack writer and from a careful study of the reports of the Children's Commission of 1842-43 she was able in her writings to bear witness to the sorry position not only of women in factories and the sweated trades but of those who were in the overcrowded and underpaid occupations of governess and dressmaker. She saw clearly the necessity of new outlets for the self-supporting middle class women and at the age of sixty-two, inspired by the work of Florence Nightingale in the Crimea, visited hospitals and charitable institutions in Germany and France to collect information about the training of workers, which she then promulgated in lectures later published as *Sisters of Charity Catholic and Protestant Abroad and at Home* (London 1855) and *The Communion of Labour* (London 1856). She was the first person to sign the petition to Parliament in 1856 for a married women's property act to protect women's earnings. Without having formulated a clear cut philosophy Mrs. Jameson's "sound thought, fearlessly expressed" made her a forerunner of feminism.

WANDA FRAIKEN NEFF

*Consult:* Macpherson, Geraldine, *Memoirs of the Life of Anna Jameson* (London 1878); Neff, W. F., *Victorian Working Women* (New York 1929).

JANET, PAUL (1823-99), French philosopher and historian. After graduating from the École Normale Supérieure Janet was for a time secretary to Victor Cousin. Appointed in 1848 to the

University of Strasbourg, he devoted himself to the history of political and moral philosophy from its remote origins in China and India up to the French Revolution. The result of these studies was his great work on political science, *Histoire de la philosophie morale et politique dans l'antiquité et dans les temps modernes* (2 vols., Paris 1858), which appeared subsequently in several editions (the last of which was ed. by G. Picot, 2 vols., Paris 1913) with the title *Histoire de la science politique dans ses rapports avec la morale*. This work has remained a model of clear exposition and impartial judgment. It was followed by a series of penetrating studies including *La philosophie de la Révolution française* (Paris 1875, 4th ed. 1892), *Origines du socialisme contemporain* (Paris 1883) and *Saint-Simon et le saint-simonisme* (Paris 1878), taken from his popular courses at the École Libre des Sciences Politiques. In 1889 appeared his *Centenaire de 1789, Histoire de la Révolution française* (Paris). Janet justified the rights of man, recalling that France did not invent them but borrowed them from America—although the French formulated the philosophy, it was the Americans who introduced the rights politically—and demonstrating at the same time that they corresponded to concrete needs. He held that the principles of the revolution should not be condemned because of the excesses for which they may have been the pretext and that the task remaining was that of better adaptation of means to ends.

The same inspiration is found in Janet's speculative works, which he wrote after his appointment in 1864 as professor of the history of philosophy at the Sorbonne. As he said upon the publication of his *Principes de métaphysique et de psychologie* (2 vols., Paris 1897), he was never a "peevish and frightened" opponent of new systems; on the contrary, he was sympathetic and tolerant to new ideas without, however, sacrificing anything of his fidelity to *philosophia perennis* or of his critical independence. This proud profession of faith explains the lasting success of his chief work, *Les causes finales* (Paris 1876, 2nd ed. 1882; English translation, 2nd ed. Edinburgh 1883, with preface by Robert Flint), which appeared after the publication of *The Origin of Species*. In this work Janet asserts that he has based his ideas only on facts in order to safeguard "the immanence in the natural world of a purposiveness which in turn is to be understood by its relation to a transcendent end." Janet's other works include *La morale* (Paris 1874, 2nd ed. 1887; tr. by M.

Chapman, New York 1883), *Fénelon* (Paris 1892; tr. by V. Leuliette, London 1914), *La famille* (Paris 1855, 5th ed. 1864), *La philosophie du bonheur* (Paris 1863), various publications within the domain of philosophy and literature and academic handbooks for the teaching of philosophy and the history of philosophy.

LÉON BRUNSCHWIG

*Consult:* Bergson, Henri, "Principes de métaphysique et de psychologie par Paul Janet" in *Revue philosophique*, vol. xlv (1897) 525-51; Séailles, Gabriel, in *Revue politique et littéraire, Revue bleue*, 4th ser., vol. xi (1899) 65-74; Picot, Georges, "Notice historique . . . de M. Paul Janet" in *Académie des Sciences Morales et Politiques, Séances et travaux*, n.s., vol. lxx (1903) 18-55; École Normale Supérieure, Association Amicale des Anciens Élèves, *Annuaire* (1900) 31-47.

JANNET, CLAUDIO (1844-94), French economist. Jannet studied law in Provence, where he became the friend and disciple of Frédéric Le Play. At the suggestion of the latter he went to Paris, where at the newly founded Institut Catholique de Paris he was given the chair of political economy, which he held until his death.

Jannet represented the conservative Catholic wing in French economic thought. His views were elaborated in *Le socialisme d'état et la réforme sociale* (Paris 1889, 2nd ed. 1890) and *Le capital, la spéculation et la finance aux XIX<sup>e</sup> siècle* (Paris 1892). In common with the socialists of the chair he stressed the ethical basis of economics but differed from them in that he rigorously opposed the intervention of the state in the economic activities of the people. He was aware of the necessity for social action to remedy some of the evils of unrestricted economic individualism but believed that such action should be undertaken by private or communal agencies rather than by the state. In his method Jannet occupied a position approaching that of the inductive school; he stressed the necessity of studying economic phenomena in the light of the political and cultural milieu of the respective periods but recognized the universal validity of fundamental economic principles. Jannet also won recognition by his study made during a long visit to the United States entitled *Les États-Unis contemporains* (Paris 1876; 4th ed., 2 vols., 1889). In his work Jannet described the public institutions in the United States after the Civil War, pointed out the moral forces holding in check the dissolving elements and concluded with an avowal of faith in the future of American democracy.

JEAN AUBURTIN

JANSENISM was a movement within the Catholic church which took form in the seventeenth century around the theological writings and doctrines of the Flemish bishop Cornelis Jansen (1585-1638). The movement was confined principally to France, where it had an important and many sided influence on social and political life in the seventeenth and eighteenth centuries.

From a theological point of view Jansenism denoted a return to Augustinianism in opposition to the Pelagianism and semi-Pelagianism which the Jansenists attributed to the Jesuits and particularly to the Spanish theologian Molina. To the Jansenists the belief that man can achieve salvation through his own powers was equivalent to infringing upon the will of God. They thus defended the *causa dei* against the man who resists the divine will. Their God was a ruler with unlimited power, who was under no obligation to man and whose will must be obeyed unconditionally.

The controversies between the Jansenists and the Jesuits concerning the omnipotence of God and the rights of man offer certain analogies to the political discussions which arose later about the nature and limits of secular authority. The Jesuit conception of God's relation to man, which grants man certain rights and demands justice from God, is nearer to modern ideas of freedom. The Jansenists believed that man, who is fundamentally corrupted by original sin, can only hope for God's mercy. Man, they asserted, is wicked; left to himself he can only commit evil. For the Jesuits, on the other hand, man as such is not a sinner. Whether he acts morally or immorally depends upon his free will. In contradistinction to the Jansenists' utterly pessimistic view of human nature the Jesuits revealed a more optimistic attitude, one suggestive of the ideas of the Enlightenment and of Rousseau, who believed that man is fundamentally good.

But while the Jesuits in many ways anticipated modern tendencies, the lay communities sympathized chiefly with the Jansenists for several reasons. The Jansenists maintained that God must be obeyed in preference to man, and they were accordingly ready to oppose the public authorities whenever they had reason to believe that the latter were requiring citizens to act in a manner incompatible with true faith and the duties imposed by it upon every Christian. This defiant attitude gained for them the favor of the educated classes, who in theological form thus gave expression to their own claims against the public authorities. Furthermore the Jansen-

ists offered the layman opportunities to acquire an understanding of the grounds underlying their theological tenets. Their polemical writings enabled non-theologians to participate in theological discussions. On the basis of the texts cited in these controversies it became possible for the layman to make an independent decision as to which side was right. To win the layman over to their cause became in fact the great concern of the Jansenists, for with his support they could resist more effectively the attacks of the state and the church.

Under the influence of the Jansenist polemical writings religious questions became instrumental in creating a public opinion. Every educated person sooner or later took sides in the controversies that raged between the two parties. Theology became a matter of public interest and the layman acquired the right to utter an opinion in a field that had been formerly reserved for the clergy. To this the church and the state were opposed, while the Jansenists were glad to see the layman come out in defense of his faith.

These matters concerning which the educated layman was now given an opportunity to express his opinions were, in view of the interlocking of church and state, of the utmost importance for public life, and the discussions concerning them may be considered as constituting a theological forum of public opinion preceding and in a certain sense preparing for the philosophical and political forums of later days. Philosophers were later to dismiss all theological controversies as sterile, but such discussions were of great significance in the development of the educated middle classes. These controversies did not of course involve any free exchange of opinions such as that carried on by the philosophers of the Enlightenment. The final court of appeal was the Catholic tradition. In terms of this tradition the educated layman with the aid of the Jansenist theologians was in a position to detect violations in decisions of the state and church. The Jansenists regarded tradition as opposed to the authority of the temporary holders of ecclesiastical power. It was to tradition so interpreted and especially to St. Augustine that they appealed in their contest with the Jesuits, whom they believed to advocate a new and consequently false theology. They emphasized repeatedly that nothing must be taught which stands in contradiction to the inalterable basic doctrines of the church.

It is this defense of established basic doctrines that accounts for the intellectual affinity be-

tween the Jansenists and the *parlements*, which were the champions of legal traditions, particularly in the field of canon law. Both had the same adversaries: the absolute kings, who did not care for the old rights; the representatives of the Roman papacy; and especially the Jesuits, who wanted to bestow unlimited authority upon the pope. The same reason explains why in the eighteenth century the Jansenists combated both the Jesuits and the philosophers of the Enlightenment, who in their eyes exhibited a similar intellectual outlook, and began to play the role of a conservative opposition in the ecclesiastical and religious field. They gradually became the party of the old belief, opposing all modern tendencies which endeavored in some way or other to mitigate the harshness and austerity of this faith.

This evolution of Jansenism from a religious community which had grown up in the convent of Port-Royal into a party which penetrated into wide circles had a profound effect upon the public life of France. Jansenism was not a sect, as was claimed by its adversaries. It was neither an order, like the Jesuits, nor a publicly recognized institution, like the *parlements*, but rather an organization which developed freely on the basis of common convictions and which had certain characteristics of modern political parties. This became particularly evident when the Jansenists began to publish a periodical of their own: the *Nouvelles ecclésiastiques* (1728-1803). The magazine owed its origin to the controversies caused by the publication of the bull *Unigenitus* (1713), which condemned the 101 propositions in the work of the Jansenist Quesnel: *Le Nouveau Testament en français avec des réflexions morales*. The *Nouvelles ecclésiastiques* gradually began to make critical comments on all the daily occurrences that took place in the life of the church. The attitude of opposition which was thus popularized by the magazine contributed to the preparation of the lower clergy for the important role they were to play in the first days of the French Revolution. By that time, it is true, theological controversies had already lost much of their original interest; but the Jansenist longing for a pure Christianity aloof from all secular concessions persisted and continued to inspire the lower clergy with a desire to reform the church.

The Jansenists also made an important contribution to the development of a social morality, achieving their first great victory in the publication of Pascal's *Lettres provinciales* in 1656.

Combating the lax moral views of the casuists they represented—especially in the personality of Arnauld—the type of the *honnête homme*, whose life was in accordance with his views.

It would, however, be erroneous to see in the Jansenists simply the opponents and in the Jesuits the adherents of casuistry and probabilism. The Jesuits too often brought to light a positively oriented social morality significant for modern economic life. The most outstanding Jesuit representative of this tendency was the preacher Bourdaloue, whose counterpart on the Jansenist side was Nicole, the author of the *Essais de morale*. In both can be found vigorous elements of an urban middle class morality. Nicole maintained that the mode of life of this class lent itself better to Christian ideals than did that of the courtiers. Poverty, on the other hand, could become dangerous for a Christian, who was therefore advised to lead a modest bourgeois life, to regulate his conduct in accordance with firm principles, to fulfil his duties loyally, to be conscious of the sinfulness of man and never to try to rise above his own class.

The social morality of the Jansenists proved to be a stimulus to the growth of the ethical consciousness of the urban middle class. Certain of their tendencies led to the development of the bourgeois type of Christian, the type who performs his daily activities with the consciousness that he is pursuing moral ends and that he is doing God's work on earth. The Jansenist social morality could not, however, continue to satisfy the demands of the middle class as the latter became prosperous and acquired social prestige. It was not adapted to the spirit of the new economic life. In glorifying the self-sufficiency of the lower middle class the Jansenist morality was unable to justify the aspirations of the upper bourgeoisie for power and wealth. It was reserved for the philosophers of the Enlightenment to supply the latter with appropriate values and ideas.

BERNHARD GROETHUYSEN

See. JESUITS; PAPACY; GALLICANISM; ENLIGHTENMENT.

Consult. Sainte-Beuve, C. A., *Port-Royal*, 9 vols. (new ed. Paris 1926-28); Beard, C., *Port Royal*, 2 vols. (London 1861); Séché, L., *Les derniers jansénistes*, 3 vols. (Paris 1891); Paquier, J., *Le jansénisme* (Paris 1909); Gazier, A., *Histoire générale du mouvement janséniste*, 2 vols. (Paris 1923-24); La Porte, J., *La doctrine de Port-Royal* (Paris 1923); Groethuyssen, B., *Die Entstehung der bürgerlichen Welt- und Lebensanschauung in Frankreich*, 2 vols. (Halle 1927-30); Prédlin, E., *Les jansénistes du XVIII<sup>e</sup> siècle et la constitution civile du clergé* (Paris 1928).

JANSSEN, JOHANNES (1829-91), German historian. After studying history and theology Janssen became professor in the *Gymnasium* at Frankfurt on the Main. His importance, which is still considerable, is based on his chief work, *Geschichte des deutschen Volkes seit dem Ausgang des Mittelalters* (8 vols., Freiburg i. Br. 1877-94; new ed. by L. Pastor, 1913-24; tr. by M. A. Mitchell and A. M. Christie, 16 vols., London 1896-1910, with index 1925). This book was in many respects not only original but epoch making. The account was built up almost exclusively on contemporary sources, which Janssen harmonized into a mosaic of extraordinarily vivid representations. The narrow limits of the hitherto predominantly political view of history were extended to include a universal examination of all historical spheres of life. The masses, almost overlooked by Ranke and his school, advanced to the foreground and became the deciding factor in historical action. The chief emphasis was placed no longer on political and military events but on the aspects of social and cultural life. Thus, along with Freytag and later Jamprecht, Janssen blazed the trail in social, economic and cultural history in Germany. He was entirely original even in his analysis of the course of history. Like Dollinger before him he grounded his work scientifically on the thesis today almost universally accepted that German culture and the German people reached the peak of their development not in the period of the Reformation but in that of the later Middle Ages. He showed that the sixteenth century was a period of decline, which reached its lowest point in the 'Thirty Years' War. Although this complete reversal of the official historical picture was sharply attacked, Janssen's history had a wider sale in Germany than any previous history of similar scope.

Janssen, a Catholic, had been urged to make this complete revision in the evaluation of the Protestant revolt by his Protestant teacher and friend, Friedrich Böhmer. Like Bohmer, Janssen supported in opposition to the "Prussian" school of historians that interpretation of German history which saw in the increase of the territorial power of the princes and in the decline of the idea of a universal empire after the sixteenth century the greatest peril for the development of Germany.

ERNST LASLOWSKI

*Consult:* Pastor, Ludwig, *Johannes Janssen 1829-1891* (Freiburg i. Br. 1892), and *Aus dem Leben des Geschichtsschreibers Johannes Janssen* (Cologne 1929);

"Professor Janssen and Other Modern German Historians" in *American Catholic Quarterly Review*, vol. xii (1887) 424-51, Laslowski, Ernst, "Janssens Geschichtsauffassung" in *Historisches Jahrbuch*, vol. xlix (1929) 625-40, Fueter, Eduard, *Geschichte der neueren Historiographie*, Handbuch der mittelalterlichen und neueren Geschichte, pt. 1 (2nd ed. Munich 1925) p. 571-75; Schnabel, Franz, *Deutschlands geschichtliche Quellen und Darstellungen*, vol. 1- (Leipzig 1931-) p. 304-10. For the controversy concerning Janssen's work see: Delbrück, H., *Historische und politische Aufsätze* (Berlin 1887) p. 5-32, Lenz, M., *Kleine historische Schriften* (Munich 1910), Schwann, M., *Johannes Janssen und die Geschichte der deutschen Reformation* (Munich 1893), and Janssen's reply in *An meine Kritiker* (Freiburg i. Br. 1884, new ed. 1891), and *Ein zweites Wort an meine Kritiker* (Freiburg i. Br. 1895).

JAPANESE IMMIGRATION. *See* ORIENTAL IMMIGRATION.

JARVIS, EDWARD (1803-84), American statistician and physician. Jarvis was president of the American Statistical Association from 1852 to 1882 and active in the improvement of the federal census during this period. After a few years of general medical practise he devoted himself increasingly to mental diseases. In this connection he became interested in the reports of the census of 1840 and discovered gross errors in the statistics of insanity among northern Negroes. According to the reports many northern towns had more Negro lunatics than the total colored population. Jarvis exposed the errors in a pamphlet, *Insanity among the Coloured Population of the Free States* (Philadelphia 1844), and called the matter to the attention of the American Statistical Association, which requested Congress to take action to correct the errors. The erroneous figures, however, had been widely used as proslavery propaganda and Congress took no action. Jarvis assisted unofficially in the census of 1850 and was appointed by the secretary of the interior to prepare the section on mortality statistics of the census of 1860, which he put on a more comprehensive and scientific basis, and worked on the census of 1870. He also served as a member of several commissions on lunacy, public health and statistics and published a number of reports on those subjects. The American Statistical Association in 1860 sent him as its representative to the fourth International Statistical Congress in London. On his retirement in 1883 he was made president emeritus of the association.

GEORGE A. LUNDBERG

*Consult:* Wood, R. W., *Memorial of Edward Jarvis*



M.D. (Boston 1885); Peabody, A. P., *Memoir of Edward Jarvis*, M.D. (Boston 1885); *The History of Statistics*, ed. by J. Koren (New York 1918) p. 7-12.

**JASTROW, MORRIS** (1861-1921), American orientalist. Jastrow was born in Poland. His father was a Talmudic scholar who, expelled because of his sympathies with the Polish revolutionists of 1863, emigrated to the United States and in 1866 became rabbi of a Philadelphia congregation. After graduating from the University of Pennsylvania Jastrow studied under the most distinguished European orientalists and the pioneers of the science of comparative religion. He became lecturer in Semitics in his university and later professor; he was university librarian from 1898 to 1919. Jastrow showed remarkable acumen and versatility in almost all lines of Semitic studies. For his doctorate he published a work of the Jewish-Arabic grammarian Hayyuj. His Biblical studies covered a wide range in philology and criticism, culminating in a number of critical translations which illustrated his theory that the Bible reflected the ideas of a series of writers with diverse points of view. He early distinguished himself as an Assyriologist, particularly by his studies in Babylonian religion, which were among the first authoritative works on the subject. He cast much light on the social history of Babylon and on the relation between the Babylonian and Hebrew cults. Jastrow was an American pioneer in the study of the history of religion and the prime mover in obtaining recognition for the new science. He was a founder and the secretary of the Committee of American Lectures on the History of Religion, which published an important series of volumes, and edited a series of notable textbooks on the religions of the world; he stimulated considerable scholarly work among his students.

J. A. MONTGOMERY

*Consult:* Montgomery, James A., in *American Journal of Semitic Languages*, vol. xxxviii (1921-22) 1-11; Morgenstern, J., and others, in *American Oriental Society, Journal*, vol. xli (1921) 322-44, containing full bibliography.

**JAURÈS, JEAN** (1859-1914), French socialist leader, statesman and historian. Jaurès studied at the École Normale Supérieure and after several years of teaching at Albi and at Toulouse, where he was professor of philosophy, he devoted himself to politics and was elected deputy in 1885. He began as a moderate republican but was very sensitive to advanced ideas. He soon left the moderate republican party of the left

center to become one of the most brilliant leaders of the socialist groups of the Chamber along with Millerand, Jules Guesde and Édouard Vaillant. After his defeat at the election of 1898 he devoted himself entirely to socialist activity. He directed with great success the socialist organ, the *Petite république*, and collaborated on the doctrinal review of reformist socialism, the *Revue socialiste*, founded by Benoît Malon in 1885. In 1904 he founded a newspaper entitled *Humanité* in which until his death he defended his ideas and his socialist method and conducted a vigorous campaign for world peace against French nationalism and European imperialism.

Jaurès can be considered the perfect type of orator. He appealed at once to the feelings, to the reason and to the aesthetic sense. The form of his speeches was harmonious and distinguished, his learning wide and deep, his persuasive force very great. In his speeches he appeared at once impassioned and convincing, the leader of his party and a prophetic statesman. Great charm and great interest characterized his oratory; all of his listeners, even his opponents, were affected by the majesty of his words, by the clarity and solidity of his arguments, by the richness of his images. He deduced his socialism, which was essentially reformist and evolutionist, from democratic ideas. He considered social reform, the socialization of capitalist property, as the logical consequence of political democratic equality. Socialism thus becomes an economic democracy. The people will advance from political sovereignty to economic sovereignty; they will become masters of the entire nationalized wealth. Jaurès considered these reforms not only as a partial amelioration of the economic situation of the working class but as steps toward the social revolution. The reforms added one to another will end in an organic transformation of society. Jaurès recognized the class struggle as a historical fact and emphasized on every occasion the moral grandeur of the social revolution, which he wished to see take place without violence as a result of the concentrated force of the revolutionary proletariat and advanced democracy.

Jaurès was profoundly idealistic. He recognized the scientific and historical value of Marxian ideas; he admitted the historical role of the proletariat as the fundamental agent of the social transformation but sought to reconcile Marxist materialism with his own idealism. In his *Histoire socialiste de la Révolution française* (new ed. by A. Mathiez, 8 vols., Paris 1922-24; originally

published as vols. i-iv of *Histoire socialiste, 1789-1900*, 13 vols., Paris 1901-09), one of the most significant economic interpretations of the revolution, he attempted to reconcile the sociological history of Marx with the heroic and dramatic history of Plutarch and Michelet.

Jaurès was essentially a pacifist and internationalist. In his campaign during the Dreyfus affair, throughout which he heroically combated the reactionary chauvinism of the clergy and the military in the period from 1898 to 1902, he displayed his brilliant qualities as an orator and man of action. Although he always exalted the French national genius he recognized the same right to exist on the part of all the other nationalities, which form according to the Hegelian formula necessary "moments" in the golden chain of humanity.

Playing a preponderant role in the international socialist congresses Jaurès, attacked by the left wing of the Second International (Bebel, Jules Guesde and others) and supported by its center (Victor Adler, Émile Vandervelde), secured at the Congress of Amsterdam in 1904 the unification of numerous socialist groups in France. This had been the ideal of his life and corresponded with his philosophical and social conceptions, which might be characterized in general as an evolutionary pantheism in which the idea of unity predominates. This idea of unity reappeared in all his political and social activity based on solidarity and the interpenetration of all advanced ideas. He constructed the synthesis of socialism, democracy and free thought. An apostle of secularism, he was one of the initiators of the separation of church and state in France. Combining a deep emotionalism with a cultivated intelligence Jaurès was a living synthesis who sought constantly to reconcile opposites and to create a harmonious mankind.

This was his strength but also his weakness, for he believed too deeply in the goodness of men and things. Surrounded by hatred and by nationalistic enmity, he was careless of his own security.

On July 25, 1914, Jaurès delivered a remarkable speech at Lyons, in which he stated the responsibility of France as well as of the other capitalist countries in the catastrophe which was about to occur. On July 31 on the eve of the declaration of the World War he was assassinated.

CHARLES RAPPOPORT

*Works: Oeuvres de Jaurès*, ed. by Max Bonnafous, vols. i-ii (Paris 1931).

*Consult: Rappoport, Charles, Jean Jaurès, l'homme, le*

*penseur, le socialiste* (3rd ed. Paris 1925); Vandervelde, Émile, *Jaurès* (Paris 1929); Lévy-Bruhl, Lucien, *Jean Jaurès* (new ed. Paris 1924); *Jaurès par ses contemporains*, ed. by F. Pignatelli (Paris 1925); Lacombe, Paul, "Les historiens de la Révolution: Jean Jaurès" in *Revue de synthèse historique*, vol. xvi (1908) 164-74 and 272-302; Aulard, A., "M. Jaurès, historien de la Révolution" in *La Révolution française*, vol. xliii (1902) 289-99; Pease, Margaret, *Jean Jaurès, Socialist and Humanitarian* (London 1916).

JAVID, MAJIMAD (1876-1926), Turkish statesman. Javid Bey was born a *dunmeh*, a member of a Salonika group of Spanish-Jewish origin which had been converted to Islam. He studied in Istanbul and worked as a bank clerk, translator and professor of economics. He became interested in the Young Turks and was a member of the inner Committee of Union and Progress at the outbreak of the revolution of 1908. Although the spectacular figure in the uprising was Enver Pasha, it was Javid and Talaat who really sustained and directed it.

After the Young Turks came into power Javid achieved success as a financial administrator. He became a deputy in parliament, reporter of the budget committee and in 1909 minister of finance. He established a finance department on western lines and, refusing a French loan because its terms included French intervention in Turkish finances, arranged in 1910 a loan of \$30,000,000 with the Deutsche Bank. In 1911 he was forced to resign but was reappointed after the First Balkan War and helped with negotiations concerning railway concessions and loans.

He strove to keep Turkey neutral in 1914 and resigned when war became inevitable. In 1917 he was again appointed minister of finance and through his financial arrangements he kept Turkey comparatively free of burdensome war debts. He fled after the Armistice but returned in 1922 and became Turkish representative on the Public Debt Council. At the Lausanne Conference he was instrumental in preventing French financial control of Turkey.

After the triumph of Kemal, Javid presided over a secret conference of surviving Young Turk leaders, who drew up plans for a progressive party. The discovery in 1926 of a plot to kill Mustafa Kemal led to Javid's arrest; together with a number of others charged with conspiring to overthrow the government forcibly he was condemned and executed.

ALBERT H. LYBYER

*Consult: Earle, E. M., Turkey, the Great Powers and the Bagdad Railway* (New York 1923).

**JAWORSKI, WŁADYSŁAW LEOPOLD** (1865–1930), Polish jurist and social philosopher. Jaworski was professor of law at the University of Cracow. He served for some time as a member of the Reichsrat in Vienna and during the World War he headed the Naczelny Komitet Narodowy (Supreme National Committee), which represented the Polish cause before the Central Powers.

Like many of his generation Jaworski started out as a rationalist in philosophy, an individualist in social theory and a relativist in ethics; however, he soon perceived the limitations of these views and through an intensive study of Plato, Aquinas, Vaihinger and Spann arrived at a universalist-romanticist conception of society with Christian ethics at its base. His concrete contributions were in the field of law. Despite his early opposition to the predominant tendency of his time to regard legal problems from a purely historical and dogmatic point of view he became known as a brilliant representative of legal dogmatism through his works on the law of mortgages and on land registers. Dissatisfied, he turned to administrative and public law and to the philosophy of law. He became an adherent of Kelsen's school but differed from Kelsen in his acceptance of absolute values. His later studies in private and public law are clearly imbued with his social attitude. Even private law, Jaworski held, deals with social phenomena. There is one group of situations which are the result of the life of men in society, but they are after all subject to the control of individuals through the agencies of political life. There is another group of situations that originate in individual aims, but these are nevertheless controlled by the state whenever an individual asks for its cooperation. The norms of the first group are the objects of public law, while those of the second are the objects of private law.

In his project for an agrarian code, published several years before his death, Jaworski endeavored to put his theoretical views into practise. The basic idea of present day land reform in Poland is the creation of the largest possible number of farms providing adequate means of livelihood for single families. According to Jaworski, although this idea belonged to economics rather than to jurisprudence it had to be translated into legal terminology. This translation Jaworski accomplished by introducing into his code the pragmatic idea of "the unit of agricultural enterprise." Since the object of the law is to insure not possession but a definite kind of

organized activity, it was included in the domain of administrative rather than private law. Jaworski also drew up a proposed draft for a Polish constitution.

KAZIMIERZ W. KUMANIECKI

*Important works:* *Prawo cywilne na ziemiach polskich* (Civil law in Polish territories), 2 vols. (Warsaw 1919); *Prawo administracyjne* (Administrative law) (Warsaw 1924), *Projekt kodeksu agrarnego* (Project of an agrarian code) (Warsaw 1928), *Projekt konstytucji* (Project of a constitution) (Cracow 1928).

*Consult:* *W. L. Jaworskiego życie i działalność* (Life and work of Jaworski) (Cracow 1931).

**JAY, JOHN** (1745–1829), American diplomatist, statesman and jurist. Jay was serving as member of the Continental Congress when in 1777 he was recalled to aid in drafting a constitution for New York state, the first of the new constitutions to provide for the election of governor by popular vote. In 1779 he served as president of the Continental Congress until he was chosen to negotiate with Spain a treaty which should give the United States among other things free navigation of the Mississippi and a loan. The negotiations proving fruitless, he was transferred in 1782 to Paris as one of the commissioners to arrange peace with Great Britain. He became suspicious of France, perhaps without entire justification, and was largely responsible for the decision to conclude independently of France and contrary to the instructions of Congress the preliminary peace treaty of 1782. As secretary of foreign affairs from 1784 to 1789 he was engaged chiefly in carrying on prolonged although unsuccessful negotiations with Spain over boundaries and the Mississippi question. He urged a revision of the Articles of Confederation, favored a complete separation of legislative, executive and judicial powers and a system of checks and balances and contributed to the *Federalist* (1787–88) five articles, all but four on foreign relations. In 1789 he became the first chief justice of the Supreme Court; the most important decision during his term of office was that of *Chisholm v. Georgia* [2 U. S. 419 (1792)], which affirmed the right of a citizen of one state to sue another state in a federal court—a doctrine later set aside by the Eleventh Amendment (1798). The unsatisfactory provisions of the treaty which he negotiated with Great Britain in 1794, particularly those regarding impressment and West India trade, caused him to be for a time bitterly denounced, especially by the suspicious Anglophobes. He resigned the chief justiceship in 1795, was elected governor of New York

and served in that office until 1801, when he retired to private life. A Federalist in politics, his temperament and social position made him a moderate conservative with democratic sympathies.

WILLIAM MACDONALD

*Works: Correspondence and Public Papers*, ed. by H. P. Johnston, 4 vols. (New York 1890-93).

*Consult:* Jay, William, *Life of John Jay*, 2 vols. (New York 1833); Pellew, George, *John Jay* (Boston 1890); *The Federalist*, ed. by P. L. Ford (New York 1898); Scott, J. B., "John Jay, First Chief Justice of the United States" in *Columbia Law Review*, vol. vi (1906) 289-325.

JEFFERSON, THOMAS (1743-1826), third president of the United States. After completing his course of study at William and Mary College Jefferson took over and enlarged his father's estate in Albemarle county, Virginia. He practised law until 1774 and from 1769 to 1775 represented his county in the Virginia legislature. Elected to the second Continental Congress, he drafted the Declaration of Independence; but shortly afterward he returned to the Virginia legislature to support four measures providing "a foundation for a government truly republican." Three of these measures—abolition of primogeniture, abolition of entail and separation of church and state—were enacted in the course of the next twenty-five years; but, the fourth, the establishment of free public schools, was less readily acceptable. Again, in Congress in 1783 Jefferson reported the plan for a decimal coinage and drafted a proposed ordinance for the Northwest Territory. As ambassador to France from 1784 to 1789 he acquired a first hand knowledge of European society and witnessed the beginnings of the French Revolution. As secretary of state during Washington's first administration he supported Hamilton's funding and assumption plan on condition that the capital be located on the Potomac; but he was generally opposed to Hamilton's upper class, strong government program. Whereas Hamilton "feared most the ignorance of the people," his inveterate opponent was apprehensive above all of "the selfishness of rulers independent of them." During his two terms as president from 1801 to 1809 Jefferson reduced the forms of office to a "republican simplicity," endeavored to pay off the public debt, purchased Louisiana territory from France and in order to avoid war resorted to commercial embargo against France and Great Britain. From 1809 until his death in 1826 he lived in retirement at Monticello, advising his successors,

Madison and Monroe, founding the University of Virginia, occupying himself almost incessantly in study and writing and managing his estate—not successfully, since he died impoverished. He chose his own epitaph: "Here was buried Thomas Jefferson, author of the Declaration of American Independence, of the statute of Virginia for religious freedom, and father of the University of Virginia."

Next to Franklin, Jefferson was the ablest representative of the eighteenth century philosophy of enlightenment. Apart from inherited temperament three influences shaped his ideas. The first was environmental. Born and bred a gentleman farmer and possessed of a fine estate, he disliked urban life and activities; and living in the relatively democratic "up-country" he shared his region's opposition to the more sophisticated tidewater aristocracy. He thus represented a distinct class interest, that of the west against the east, of agriculture against industrial occupation. The second influence was philosophical. His natural predilections were rationalized in terms of the current philosophy, to which he was introduced in college by Dr. William Small, "from whose conversation I got my first view of the expansion of science, and of the system in which we are placed." Like most of the *philosophes*, he believed that God had created the universe according to an intelligible plan and that men had been given reason in order that they might harmonize their conduct and institutions with the "laws of nature and of nature's God." Accepting Locke's sensational psychology he believed that men were inclined to be good unless corrupted by ignorance and bad institutions. Happiest in the country, he regarded rural life as more "natural" than city life and agricultural pursuits as less "artificial" than banking and shopkeeping. His ideal society was essentially present in miniature before his eyes at Monticello. With a few changes it could be made, in keeping with his antislavery principles, into a community of free farmers economically self-sufficing or nearly so, sufficiently enlightened by free schools and governing themselves under the leadership of a benevolent country gentry through democratic-republican institutions; the powers of government distributed among township, county, state and national authorities would diminish in proportion to the territorial remoteness of the authority from the individuals concerned. The third shaping influence was his residence abroad, which confirmed him in the conviction that tyranny and privilege resulted

from an unproductive class battering on the producers; and while this strengthened his belief in the superiority of a simple agricultural society under republican forms it raised some doubts as to whether the happier state of America was more than a special and temporary condition which would disappear with the disappearance of free land. Jefferson had no naive, doctrinaire faith in republican institutions as a universal panacea. At best republican government "is the only form . . . which is not eternally at open or secret war with the rights of mankind." Yet experience seemed to show that "even under the best of forms, those entrusted with power have, in time, and by slow operations, perverted it into tyranny." Hence it was that "the tree of liberty must be refreshed from time to time by the blood of patriots and tyrants." Not any form of government alone, but the best form plus eternal vigilance, was the price of liberty.

Jefferson's philosophy was of the eighteenth century, his specific program suited to a simple agricultural society. Neither his philosophy nor his program is suited to the present industrial technological age. What has been of persistent influence and is still of value is his attitude of mind: his sympathetic acceptance of man as he is, his conviction that man can somehow master his environment to good ends, his assumption that human conduct and custom should be based upon the disinterested interpretation of the most exact and comprehensive knowledge attainable.

CARL BECKER

*Works: Writings of Thomas Jefferson*, ed. by A. E. Bergh, 20 vols. (Washington 1903-04). The Jefferson papers are in the Library of Congress.

*Consult:* Chinard, G., *Thomas Jefferson, the Apostle of Americanism* (Baltimore 1929), with bibliography; Nock, A. J., *Thomas Jefferson* (New York 1926); Hirst, F. W., *Life and Letters of Thomas Jefferson* (New York 1926); Johnson, Allen, *Jefferson and His Colleagues, Chronicles of America series*, vol. xv (New Haven 1921); Bowers, C. G., *Jefferson and Hamilton* (Boston 1925); Dodd, W. E., *Statesmen of the Old South* (New York 1926) ch. i; Becker, C. L., *The Declaration of Independence* (New York 1922); Merriam, C. E., Jr., "The Political Theory of Jefferson" in *Political Science Quarterly*, vol. xvii (1902) 24-45; Chinard, G., *Jefferson et les idéologues d'après sa correspondance inédite* (Paris 1925); Fay, B., *L'esprit révolutionnaire en France et aux États-Unis à la fin du XVIII<sup>e</sup> siècle* (Paris 1925); Vossler, Otto, *Die amerikanischen Revolutionsideale in ihrem Verhältnis zu den europäischen; untersucht an Thomas Jefferson*, Historische Zeitschrift, supplement no. xvii (Munich 1929); Beard, C. A., *Economic Origins of Jeffersonian Democracy* (New York 1915); Chinard, G., "Jefferson and the Physiocrats" in *University of California Chronicle*, vol. xxxiii (1931) 18-31; Thomas, C. S., "Jefferson and the Judiciary" in *Con-*

*stitutional Review*, vol. x (1926) 67-76; Sears, L. M., *Jefferson and the Embargo* (Durham 1927); Woolery, W. K., *The Relation of Thomas Jefferson to American Foreign Policy 1783-1793* (Baltimore 1927); Honeywell, R. J., *The Educational Work of Thomas Jefferson* (Cambridge, Mass. 1931); Robinson, W. A., *Jeffersonian Democracy in New England* (New Haven 1916); Warren, C., *Jacobin and Junto* (Cambridge, Mass. 1931), especially ch. vi; Williams, J. S., *Thomas Jefferson, His Permanent Influence on American Institutions* (New York 1913).

**JEKELFALUSSY, JOZSEF** (1849-1901), Hungarian statistician. Jekelfalussy studied law, economics and statistics at the University of Budapest and entered the Bureau of Statistics in 1871, the year in which it became an independent department. Working under Keleti, Jekelfalussy soon attained a prominent place in Hungarian official statistics. He participated in the census of 1880, the first to use individual cards. He organized that of 1890, introducing many reforms, among them a method of collecting vocational statistics in industry which attracted considerable attention abroad. In 1892 he was appointed head of the bureau; he reorganized it and introduced important innovations in the method of compiling the statistics of foreign trade and of agriculture. The published reports on the latter proved of the greatest help in shaping subsequent agricultural policy. Jekelfalussy introduced the use of individual blanks in the compilation of statistics of crime and social unrest, reorganized educational statistics and instituted new branches of statistical inquiry. He was instrumental in the enactment of the bill of 1897 which provided for the compulsory collection of statistics, and which was of the greatest significance in the further development of official statistics in Hungary.

FRÉDÉRIC DE FELLNER

*Important works:* *A községek háztartása és pótdadjúk 1881* (Municipal housekeeping and sutaxes 1881) (Budapest 1883); *A községi pénzügy főbb eredményei hazánkban* (The principal results of municipal finance in Hungary) (Budapest 1883); *Hazánk bűnügyi statisztikája 1873-1880* (Criminal statistics of Hungary from 1873 to 1880) (Budapest 1883); *Magyarország népességi statisztikája* (The demography of Hungary) (Budapest 1884); and numerous articles in statistical periodicals.

*Consult:* Gyula, V., in *Közgazdasági szemle*, vol. xxv (1901) 169-70; Kovács, A., in *Institut International de Statistique, Bulletin*, vol. xii, no. 2 (1902) 153-55.

**JELAČIĆ, COUNT JOSIP** (1801-59), Croatian statesman. Jelačić was educated at the Theresianum, a school for the nobility in Vienna,

and became an officer in the Austrian army. In 1848 he was appointed Croatian ban and military commander and as such governed almost all the Croatian lands then under Austria-Hungary—Croatia, Slavonia, Dalmatia, Medjumurje and Fiume—a unification which greatly stimulated Croatian national consciousness.

Jelačić was a prominent figure in the Croatian renaissance and in the formation of the Yugoslav nation. His greatest achievement was to turn the conflict between the Magyars and the Austrian court to the advantage of Croatia at a time when the Croats were seriously threatened with the danger of Magyarization. There were Serbs in Croatia and even in Hungary who were in a similar position with regard to the Magyars, and Jelačić in agreement with the Serbian leaders started the joint struggle against them. By opposing the Magyars and maintaining Croatian loyalty to Austria Jelačić performed an important service for the distraught imperial government and as a result secured significant gains for the Croats and for the Serbs as well. Magyarization in Croatia and in Slavonia was checked; Croatian was introduced as the official language and the Croats were united under the rule of one man. All these factors helped create conditions favorable to the foundation of a Croatia independent to some extent of Hungary. The joint war carried on by the Croats and Serbs in 1848–49 against the Magyars strengthened their relations and pointed the way in the political and national struggle. During the period of Germanization which followed the defeat of the Hungarian revolutionists Jelačić succeeded in obtaining certain substantial advantages for the Croats, such as the independence of the Croatian church from Hungary in 1852.

DUŠAN J. POPOVIĆ

Consult. Horvat, R., *Ban Jelačić* (1909); Šišić, F., "Kako je Jelačić postao banom" in *Jugoslavenska Njiva*, vol. vii (1923) 169–83.

JELLINEK, GEORG (1851–1911), German jurist. Jellinek, the son of the rabbi Adolf Jellinek, was born in Leipsic but in 1857 moved with his family to Vienna. He devoted himself to legal and philosophical studies in Vienna, Heidelberg and especially in Leipsic, where the influence of Wilhelm Windelband permanently fixed his *Weltanschauung* in the new Kantian spirit. After nearly two years of experience in the Austrian public service he attempted to embark upon an academic career, but despite his many important publications antisemitic opposition hindered his

preferment. He ultimately became professor at Heidelberg, where he continued his activity as teacher and scholar from 1891 to his death.

Georg Jellinek's great importance as a political theorist lies in his skill at comprehensive synthesis. In the period of positivistic narrowing of the scope of the science of public law inaugurated by Gerber and Laband he constantly strove to rest its dogmatic treatment upon the foundations of the history of ideas, philosophy, comparative law and finally sociology. The central problem for him was the relationship of the individual to the state. He developed particularly the conception of the autolimitation of the state. In his *System der subjektiven öffentlichen Rechte* (Freiburg 1892, 2nd ed. Tübingen 1905) he revived ideas of the rights of man, and in his internationally celebrated *Die Erklärung der Menschen- und Bürgerrechte* (Leipsic 1895, 4th ed. Munich 1927; tr. by M. Farrand, New York 1901) he sought to connect the ideas of the celebrated declaration with Anglo-Saxon experience rather than with Rousseau. He gave systematic and brilliant expression to the whole range of his ideas in his *Allgemeine Staatslehre* (Berlin 1900; ed. by W. Jellinek, Berlin 1914). In this classic of German political theory, which in translation has also strongly penetrated foreign scholarship, he attempted, although not always successfully, to combine the sociology of the state—until then entirely neglected by German jurists—with the science of public law. Jellinek's intellectual universality as well as his political tact always restrained him from employing to an excessive degree in problems of political theory the method of jurisprudence developed from the private law.

HERMANN HELLER

Other important works: *Die sozialtheoretische Bedeutung von Recht, Unrecht und Strafe* (Vienna 1878, 2nd ed. Berlin 1908); *Die rechtliche Natur der Staatenverträge* (Vienna 1880); *Die Lehre von den Staatenverbindungen* (Vienna 1882); *Gesetz und Verordnung* (Freiburg 1887); *Ausgewählte Schriften und Reden*, ed. by W. Jellinek, 2 vols. (Berlin 1911). A complete bibliography of Jellinek's works is given in the *Archiv des öffentlichen Rechts*, vol. xxvii (1911) 606–19.

Consult. Zweig, E., in *Biographisches Jahrbuch und deutscher Nekrolog*, vol. xvi (Berlin 1914) p. 147–54; Hert, S., in *Staatslexicon*, ed. by H. Sacher, vol. ii (5th ed. Freiburg 1927) p. 1410–16; Lukas, J., in *Neue österreichische Biographie*, vol. vii (Vienna 1931) p. 147–52; Nelson, Leonhard, *Die Rechtswissenschaft ohne Recht* (Leipsic 1917) ch. i; Kelsen, Hans, *Hauptprobleme der Staatsrechtslehre* (2nd ed. Tübingen 1923) p. 482–91; Emerson, Rupert, *State and Sovereignty in Modern Germany* (New Haven 1928) p. 59–63, 71–73, 83–85, and 107–11.

JENKIN, HENRY CHARLES FLEEMING (1833-85), English economist and engineer. Jenkin was professor of engineering at the University of Edinburgh. His importance in economics rests on his contribution to mathematical economic analysis contained in a number of articles. In his first paper, "Trade-Unions: How Far Legitimate" (1868), his refutation of the economic opinion that unions could not raise wages anticipated Thornton's attack upon the wages fund doctrine and led him to a brilliant statement of the laws of supply and demand. The expression was algebraic in the form  $D = f(A + 1/x)$ ,  $S = F(B + x)$ , where  $x$  is price and  $A$  and  $B$  are constants representing the dependence of demand and supply upon the states of mind of buyers and sellers respectively. This statement was elaborated and supplemented by diagrammatic analysis in his "Graphic Representation of the Laws of Supply and Demand and Their Application to Labour" (1870), in which he laid down three propositions or laws of demand and supply. Distinctions were made between the determination of price at a given time and in the long run, between changes in portions of the demand and supply curves near the market price and in the whole curves and between different conditions of changing cost of production. In a subsequent paper "On the Principles Which Regulate the Incidence of Taxes" (1871-72) he asserted his preference for the diagrammatic analysis, because the curve for a given good might be determined experimentally, while the algebraic function is likely to be complicated. This article, keen throughout, is most notable for its concepts of producers' and consumers' surpluses as a direct deduction from his theory of demand and supply. Here he prefers his own analysis to that of Jevons because the latter is in terms of utility which "admits of no practical measurement," while "statistics gathered through a few years would show approximately the steepness of each curve near the market price, and this is the most important information."

## REDVERS OPIE

*Important works:* The second volume of Jenkin's *Papers, Literary, Scientific . . .*, ed. by S. Colvin and J. A. Ewing, 2 vols. (London 1887) and reprinted by the London School of Economics and Political Science, Series of Reprints of Scarce Tracts, no. 9 (London 1931) is a collection of his economic articles.

JENKINS, SIR LEOLINE (1623-85), English admiralty judge, civilian lawyer and diplomat. Jenkins fought as a royalist in the civil war and

upon the failure of the king's cause retired to his native Wales with Archbishop Frewen and Sheldon, later archbishop of Canterbury. There he formed the connections which laid the foundation of his subsequent advancement. He was later admitted to the College of Advocates of Doctors' Commons and about 1665 was made judge of the Admiralty Court; from 1676 to 1679 he was one of the English representatives at the Congress of Nijmegen. He became secretary of state in 1680 and resigned in 1684.

He achieved eminence in the fields of admiralty jurisdiction and international law. The agreements as to the jurisdiction of the Admiralty which were made in 1575 and in 1632 were not kept; the question was still open in Jenkin's day, for in 1661 and again in 1669-70 bills were introduced in the House of Lords to enact in substance the agreement of 1632. Jenkins argued unsuccessfully but with historical truth in their favor, pointing out that the common law courts were ignorant of the maritime and civil laws and could not take jurisdiction of many types of admiralty causes. Had the bills passed there can be little doubt that the law merchant would have developed in England and in America in the admiralty courts.

Jenkins' most enduring work is to be found in the Statute of Frauds [29 Car. II, c. 3, sect. 17 (1677)] and in the Statute of Distributions regulating the intestate succession of personal property [22-23 Car. II, c. 10 (1670)]; he was the principal author of both these statutes, which are still substantially in force in every common law jurisdiction.

## FREDERIC ROCKWELL SANBORN

*Consult.* Wynne, William, *Life of Sir Leoline Jenkins*, 2 vols. (London 1724); Holdsworth, William S., *A History of English Law*, 9 vols. (3rd ed. London 1922-26) vol. i, p. 552-59, and vol. vi, p. 380-93; Costigan, G. P., Jr., "The Date and Authorship of the Statute of Frauds" in *Harvard Law Review*, vol. xxvi (1912-13) 329-46; Hening, C. D., "The Original Drafts of the Statute of Frauds and Their Authors" in *University of Pennsylvania Law Review*, vol. lxi (1912-13) 283-316.

JENKINSON, CHARLES. *See* LIVERPOOL, FIRST EARL OF.

JENNER, EDWARD (1749-1823), English physician. Jenner was born at Berkeley, Gloucestershire. After studying medicine under the surgeon Daniel Ludlow and under John Hunter he obtained the degree of doctor of medicine from St. Andrews, Scotland, in 1792. He per-

formed his historic experiment with cowpox inoculation on the eight-year old James Phipps in 1796 and in 1798 published the findings of twenty-three cases in *An Inquiry into the Causes and Effects of Variolae Vaccinae* (London 1798, 3rd ed. 1801).

Contrary to the widely prevalent belief, Jenner did not discover the principle of immunization by inoculation. Variolation, inoculation of the smallpox germ for purposes of immunization, had been widely practised in Europe and America throughout the eighteenth century and had reached a high degree of success in the hands of specialists. Vaccination offered a less dangerous and simpler procedure than did variolation, and Jenner's careful instructions as to how to perform cowpox inoculation were invaluable contributions to medical science. But Jenner's role in the promotion of vaccination has been exaggerated largely through John Baron's partisan biography. Not only had the principle that cowpox offered immunity to smallpox been known prior to Jenner's work and vaccination previously been performed, but the credit for convincing the medical profession of the efficacy of the practise by sufficient evidence belongs to George Pearson and William Woodville rather than to Jenner. Pearson and Woodville were also the first to establish an organization for free vaccination and for the distribution of vaccine matter. They acknowledged the need for revaccination, which Jenner persistently denied.

BERNHARD J. STERN

*Consult:* Stern, Bernhard J., *Should We Be Vaccinated? A Survey of the Controversy in Its Historical and Scientific Aspects* (New York 1927), Baron, John, *Life of Edward Jenner* (London 1827).

JESSEL, SIR GEORGE (1824-83), English judge. Jessel, who was master of the rolls, may justly claim an honorable seat at the symposium of the masters of English equity. Posterity in naming him in the same category as Nottingham and Hardwicke would be according him no more than his achievements merit. In a sense also he may be said to have stood in relation to the modern understanding of equity in much the same position as Marshall stood in relation to the interpretation of the United States constitution, in that the life work of both was destined to fall on the morrow of great events, events which demanded for the fruition of their purposes exponents of strength and genius. Without Marshall the United States constitution might

today be but a rigid and didactic decalogue; without Jessel the Judicature Acts might have been interpreted in such a way as to bring chaos into the jurisprudence of English courts.

Two great decisions of Jessel, by showing clearly that the Judicature Acts effected primarily an alteration in adjective not in substantive law, have hewn down before it could have time to grow to any stature the forest in which many a modern jurist might have lost his way. In *re Hallett's Estate* Jessel pointed out the fundamental differences in history between law and equity and described the different machinery which each can provide for the recovery of money. In *Walsh v. Lonsdale* an even more difficult question arose: did the Judicature Acts abolish the difference between a lease and an agreement for a lease? Jessel resisted the temptation of simplicity and concluded that the effect of the acts was not thus drastic. He discriminated and held only that an agreement for a lease which equity would specifically enforce would be regarded as a lease for the purpose of giving effect to all its terms, although those terms might have been such as law would not countenance. His decision in *Pooley v. Driver* is a landmark in the law of partnership. It is the converse of *Cox v. Hickman*, the great case which laid down that profit sharing does not by itself necessarily constitute the partnership relation. Jessel's cases have been digested by A. P. Peter under the title *Analysis and Digest of the Decisions of Sir George Jessel, with Full Notes, References and Comments* (London 1883).

H. G. HANBURY

*Consult:* Nanson, E., *The Builders of the Law during the Reign of Queen Victoria* (London 1904).

JESUITS. When in 1534 Ignatius Loyola organized a small band of students at Paris, his intention was to create an order for missionary service in Palestine. Had this been realized, the society would never have acquired its historic significance. But the revival of war between Venice and Turkey prevented travel to the Orient, and in 1537 Loyola went to Rome in quest of a substitute for his frustrated purpose. There he formulated a new program which included in addition to missionary work educational activity, preaching and the service of the papacy. The society immediately entered upon active pursuit of these objects, but its definitive character was not shaped until it emerged as the most militant weapon of Catholicism against Protestantism.



The essential ethos of the Jesuit order is to be understood only in the light of the reaction produced in the Catholic church by the disruptive consequences of the Protestant revolt. At the time of Loyola's arrival in Italy the Reformation had gained sympathizers even at Rome, and the papacy under Paul III (1534-49) had responded to the menace by stiffening itself against all compromise with innovation. Fused with the religious fervor and militant passion which Loyola brought to Rome this spirit molded the Society of Jesus, giving to the church the instrument for aggressive warfare unprovided by its older institutions. The whole future policy of the order was determined by the undivided purpose of annihilating the enemies of the church. The Jesuits became pledged to crush all manifestations of nonconformism within Catholicism with the same ruthlessness as open secession, for the exigencies of warfare demanded unquestioned unity of both doctrine and guidance. The slightest concession might threaten the whole structure. The immutable, absolute authority which they needed they ascribed to the church by identifying the ecclesiastical with the divine. The church in its historical form became for them the visible realization of God's will; it was to be *semper eadem*; its dogmas like its constitution and ritual were unimpeachable. Having evolved such a conception of the church the Jesuits found in it ample justification for any means they might employ to preserve it against the inroads of change. Their aim constituted an injunction to intellectual rigidity and to obduracy against pity. The Jesuits may be compared with the mendicant orders which had risen and been used by the church against the less serious heresies of the thirteenth century. The Dominican order had been inclined to favor the Inquisition and the application of other violent methods against apostates, but in the long run it had been more concerned with science and the salvation of souls within the faith. The Jesuits, on the other hand, have never as an order relaxed the spirit of inexorable militancy in which it was conceived, although individual exceptions have sometimes appeared among their members.

The Jesuits represent the final stage in the evolution of religious orders away from the solitude and fixity of monasticism. With the mendicant orders or friars the glorification of flight from the world which had been characteristic of the Benedictines, Cistercians and Premonstratensians had been supplanted by the ideal of

service through contact with the laity. To fit their purpose they had developed an institution allowing peregrination but still sufficiently influenced by monasticism so that communal life, the obligatory monkish garb and the common choral prayer were retained. All these elements were discarded by the Jesuits as obstructions to active work in an agitated world. They became "clerks regular" in contrast to both friars and monks.

The Society of Jesus was definitely organized in 1539, when Loyola drew up a preliminary code of laws which was confirmed the following year by the bull *Regimini militantis ecclesiae*; its definitive constitution, based on the cumulative experience of the founder and his associates, appeared in its final form in 1558. These documents are the institutional expression of the reaction of Catholicism to its precarious status about the middle of the sixteenth century. Virtually all power was placed in the hands of the general of the order, who was chosen for life. Without abandoning the semblance of representative government, introduced by the friars simultaneously with their development of a centralized direction of all branches of the order in place of the older system of autonomous monasteries, the Jesuits rendered such a check upon administrative efficiency innocuous. The General Congregation, closely corresponding to the General Chapter of the mendicant orders, although it possessed the sole right to legislate, to elect a new general and to impeach an unworthy incumbent met, except in extraordinary circumstances, only after the general's death. The type of organization and nature of the society were thoroughly harmonious with the founder's Spanish heritage. Loyola had before his eyes the ideal of a holy militia, of a military Company of Jesus, as was natural for a Spanish nobleman whose countrymen and class had for centuries engaged in fanatical crusades against the Moors. The society in fact drew its most zealous adherents from Spain; and nowhere was it to achieve wider extent.

Obedience occupied the position held by renunciation among the Benedictines. It was Loyola's intention to derive the motive power of the order from the pure love of God, but as an inevitable consequence of the dogmatic and anthropomorphic nature of the Jesuit conception of God the emphasis was transferred to blind acceptance of the views espoused by the order. The idea that the dissenter was not only misled but reprobate was exalted by the Jesuits into an

infallible principle. While from the time of the military orders there had been a progressive tendency on the part of religious orders to stress obedience, no other order, not even the Franciscans, whose founder had imposed a kind of "corpselike" submission, exacted such complete prostration of its members before the order's dictates. The individual Jesuit was regarded as a robot in the hands of his superiors. With a view to recruiting only persons of sufficient talent and strength to extinguish their own wills requirements for admission to the society were made more stringent than in any other order and a long period of probation was enforced.

The peculiar Jesuit device for generating a corporate spirit was the Spiritual Exercises—a regimen of intensive mental, physical and religious drill which is prescribed in detail in Loyola's *Exercitia spiritualia*. Begun probably in the 1520's and finally approved by Paul III in 1548, the exercises reflect at the same time Loyola's military experiences and the agonized course of self-immolation which had led him to the final victory of unreserved surrender. Twice during his lifetime each member of the order had to undergo the complete drill, which might extend over a period of several weeks; and every year he had to undergo an abridged form. Except for the presence of a master of exercises to supervise the performance and within certain clearly defined limits to adapt the rules to the special weaknesses of the individual absolute solitude was required. According to a carefully graduated system the practitioner rose through meditation, self-examination and purgation from all earthly concerns to the final ecstatic union with God. The drill shows a minute knowledge of the interaction between physical and psychological states; no stimulus was neglected which might goad the pupil's imagination to the point where the teachings of the church and of the order become identified with divine truth. All theological speculation was rigidly excluded; the desired goal was attained by stirring the depths of the pupil's soul and causing him not to analyze but to visualize the mysteries of the Catholic religion. By thus using the practises of ascetics and saints as a means rather than an end Loyola evolved an unflinching technique for inspiring the members of the order with a superpersonal ideal, which complemented the discipline involved in constant struggle with the enemies of the church.

Although the original bull of confirmation in 1540 limited the membership to sixty, the volume of applications for admission made it necessary

to repeal this rule within three years. By 1555 the order numbered approximately one thousand members. From the outset it engaged in preaching, in educational work in both Catholic and Protestant countries and in home missionary work of all kinds. Within the first decade of its existence it organized extensive foreign missions: when Francis Xavier, one of the original members, died in 1552 he had founded Jesuit missions in the East Indies, India and Japan and converted thousands to the faith. As the order's conflict with Protestantism became more clearly defined, its lines of activity multiplied; and while throughout its history it never removed emphasis from its original aims it began its characteristic practise of penetrating into the world by any avenue that promised success. The Jesuits insinuated themselves into the confidence of princes, became the confessors of royalty, diplomats, noted organizers. The convent was not the fixed home of the Jesuit but merely a meeting place visited by a transient, who was assigned by the order to whatever post he could fill most effectively. Since in view of the political complexion of the age the most practical way of achieving submission to the church was through influencing kings and nobles, the order came to favor the selection of members from men of the world and of social position. The society itself trained its recruits to have the adroitness of courtiers, the cleverness of diplomats and a profound knowledge of human nature. The type of Jesuit stood out in sharp contrast to the religious of the older orders.

By 1550 the West was covered with a network of Jesuit institutions and establishments. At Loyola's death in 1556 it organized its various branches into twelve provinces, one of which was Indo-Japan, one Brazil and one Ethiopia. The others were Portugal, Castile, Aragon, Andalusia, Italy, Sicily, upper Germany, lower Germany and France.

Through their preaching and instruction the Jesuits were more than any other factor responsible for the regeneration of Catholic consciousness which set in throughout Catholic Europe about the middle of the sixteenth century. They founded seminaries for the education of priests, whose ignorance and unfitness had been an important cause of the decadence of the church. Jesuit schools for the laity mushrooming throughout Italy, Spain and Portugal imbued the rising generation of Catholics with the Jesuit faith and ideas. The great Collegium Romanum, which Loyola opened in 1551, became the

model for all Jesuit educational institutions. Although with progressive intensity they concentrated their attention upon the youth of the upper classes they also won much sympathy during the early years by establishing orphanages and industrial schools for poor children. Their influence upon the policies of the church became particularly apparent at the last session (1562-63) of the Council of Trent, which built enormously upon two decades of Jesuit experience. It was chiefly as a result of their activity and especially of the counsel of Diego Láinez, one of the first and most important of Loyola's followers and general of the order from 1558 to 1565, that this session abjured all doctrinal compromise with the reformers and strengthened the influence of the pope in the church. The council, however, stopped considerably short of the Jesuit position that the dogma could be preserved only if the pope were given absolute authority in church matters and over councils. From the middle of the sixteenth century until the nineteenth, when they finally carried the doctrine of papal infallibility through the Vatican Council of 1870, the Jesuits persisted in their espousal of papal monarchism, seeking to apply to the government of the church the principles of their own government, which has been rightly characterized as an absolute monarchy. For this reason and in return for the order's unabated devotion to their service the popes with a few exceptions required it with their protection and favor; customarily it was the dominant power at the Holy See.

However important might be the internal reform of Catholicism, the essential task of the Jesuits was the elimination of Protestantism in its own strongholds. The first Jesuits arrived in Germany, the most threatening terrain, during the 1540's. That in 1543 they gained the adherence of Petrus Canisius (1521-97) was of utmost importance for their success on German soil. Canisius, whose rich correspondence mirrors half a century of incessant activity, became the soul of the German movement, the founder of numerous colleges, the author of a most effective catechism and the first provincial general for upper Germany and Austria. Here even more systematically than in countries less infected by heresy the Jesuits followed a definite plan of campaign. Their first objective was the erection of colleges as a base for all future operations. After winning the young they penetrated into family life through their pupils as well as through lay religious societies, which they

founded everywhere in great profusion. At the same time they carried on an offensive through the courts. In 1552 a Jesuit college was established at Vienna, in 1556 at Prague, in 1557 at Cologne, in 1559 at Munich. Soon Augsburg, Dillingen, Treves, Mainz, Speyer, Würzburg, Halle, Fribourg in Switzerland as well as many other cities had flourishing Jesuit colleges. The Vienna institution included 400 pupils within three years, that at Cologne 480 within two years.

As systematized by General Aquaviva (1543-1615) in the *Ratio studiorum* (1585-99), a famous document in the history of pedagogy, the Jesuit plan of education represents the most thoroughgoing attempt ever made on a large scale to inculcate devotion to church ideals through lay instruction. Religious education was the fundamental element in the structure. But the fame and tremendous patronage of their schools depended to a large extent upon the emphasis which they attached also to the study of the classics. While they relentlessly expurgated the objectionable or dangerous, this limitation was offset by the pedagogical skill of the professors, who were rigorously trained in their own institutions, and by the solidity of instruction which they imparted to their pupils. In general the atmosphere of their schools was far from ascetic or austere; and in this respect they presented a sharp contrast to many of the Protestant schools, where plain living was interpreted in a rigid sense. Individual peculiarities became an object of intense concern to the teachers. Their goal was to ferret out the special aptitudes of the pupil, to break his resistance, to link him indissolubly to the order and to utilize the best available material for their own ends. They made overtures to self-love and the spirit of emulation: at frequent intervals the pupils participated in public declamations and disputations, competed for prizes, exhibited their work in the classics and in other fields and staged dramatic performances. In addition to stimulating and entertaining the pupils this served the purpose of impressing and influencing the outside world. Since the Jesuits offered free tuition they were able to attract the talented children of impecunious parents; the same consideration often impelled Protestants to entrust them with their children. During the first century the order developed into a teaching corporation of unprecedented influence and extent. In 1640 it had 521 colleges: 116 in Italy, 104 in the Iberian peninsula, 83 in Germany, 79 in France, 39 in the Low Countries and 30 in

Poland. It undertook elementary instruction only with reluctance and particularly in those regions where Protestantism was most rampant it catered almost entirely to the upper classes, for the future was to be won through the youth of the élite; in most of the European capitals and metropolitan centers there were special Jesuit colleges for children of noble birth. The majority of the Jesuit educational institutions were either colleges corresponding to the French *lycée* and the German *Gymnasium* and offering chiefly classics or institutions of higher learning, including philosophical and theological academies and universities (*Studium generale*). In addition to their own academies and universities the Jesuits acquired innumerable chairs in older institutions. In the middle of the seventeenth century higher education in Catholic Germany, the Spanish Netherlands, Hungary, Spain, France, Italy, Portugal and Poland was largely vested in the Society of Jesus. The Jesuits also founded and operated a great number of seminaries, which supplied the churches of all Europe with a highly educated and cultured secular clergy.

The Counter-Reformation was in large measure the work of force, and without the assistance of state power the success of the Jesuits would have been greatly diminished. Soon perceiving on their side the indispensability of the order in the battle against Protestantism the Catholic governments in the two chief battlegrounds, Austria and Bavaria, as well as in the German ecclesiastical principalities accorded it every mark of royal favor: they showered it with endowments, assisted it in founding colleges and procured for its members university appointments. At the Catholic courts the Jesuits acquired impregnable positions as confessors, an office which sometimes made them along with the academicians the most influential counselors in the realm. Not satisfied with the hold that the confessional gave them over the princes and the female members of the royal families the Jesuits attempted, wherever possible and by recourse to whatever intrigue the situation required, to gain mastery of the lay advisers of the governments.

Within a short time either by persecution or by less violent methods the Catholic church was reestablished in Bavaria, Austria and the Rhineland. Where not annihilated the Protestants in these regions were forced into a defensive position at the mercy of the princes, whose promises to them were never kept when the Jesuits were court advisers. The order relaxed its efforts in Germany only when the Thirty Years' War ter-

minated Protestantism in Austria and Bohemia. The same methods were employed in France, leading eventually to the virtual extinction of French Protestantism: undoubtedly the order had its share in the Massacre of St. Bartholomew. It conducted a fervid campaign in the Low Countries and Switzerland as well as in Poland, Lithuania, Hungary, Transylvania and even in purely Protestant countries. It was chiefly instrumental in converting the daughter of Gustavus Adolphus, Queen Christine of Sweden, although before she had taken the first step public resentment compelled her to abdicate. It won Augustus the Strong of Saxony to the faith, as it did Winckelmann. For a time it nurtured hopes of regaining Russia. England, to which it sent its first mission in 1580, was the field of desperate efforts in the face of a persecuting government; its hopes were renewed with the accession of Charles II only to be finally blasted with the ousting of his son James. But wherever Catholic government held sway and in some Protestant regions the Jesuits were completely successful. If the states supplied the power, the strategy and direction as well as the inspiration came from the order. In Germany, Switzerland, France and the Low Countries the Counter-Reformation was in fact chiefly the work of the Jesuits.

Home missions for religious revival and for social work, preaching and disputations for the benefit of the learned went hand in hand with court intrigue and education, although the latter function always absorbed the energies of the majority of the order. To heighten the aesthetic appeal of the church ritual the Jesuits used every means that an age of baroque art and absolutistic government could provide: magnificent churches, paintings and statues of enraptured saints, altars overflowing with gold, dazzling clerical robes, incense and intoxicating music. The princes, eager to see their personal majesty reflected in superbly wrought courts and churches, found them indispensable advisers in matters of art, while the masses became aware of the pitiful contrast between Catholic splendor and the starkness of Protestantism with its bare churches and simple services. Thus under the leadership of the Jesuits a new church was created—a church which in Germany at least was more sumptuous, more inflexible, more propagandistic, more fanatical but at the same time purer and more spiritualized than any hitherto in existence.

The Jesuits also fortified the church with a vast arsenal of apologetics and anti-Protestant literature. With the assistance of papal favor it

soon tended to achieve a monopoly of Catholic theology, its approach to which was determined by the orthodox scholasticism of the thirteenth century. Until the present day the Jesuits have consistently remained advocates of Thomism. Among the numerous distinguished theologians whom they educated were Gregory of Valencia (1550?-1603), Bellarmine (1542-1621) and Suarez (1548-1617). While it was in the theological sphere that they achieved particular eminence in institutions of higher learning they also directed their scientific and literary energies into diverse other channels. Just as through their vast output of pedagogical treatises and textbooks they made possible that complete unity of instruction from which emanated the chief strength of their school system, so they sought to infuse the Jesuit spirit into all branches of higher education. Historiography owes to them the *Acta sanctorum* (begun in 1643) besides extensive collections on the history of the councils and innumerable shorter works. They produced many eminent natural scientists, particularly physicists and astronomers. Wherever Jesuit missionaries came in contact with foreign peoples they turned to the study of ethnology. In *Letters édifiantes* and other productions they have left invaluable documents on Asia Minor, Tibet, India and Central and South America. The annual reports, or *Relations*, letters, journals and other records of their American missionaries (collected as *The Jesuit Relations and Allied Documents* . . . 1610-1791, ed. by Reuben G. Thwaites, 73 vols., Cleveland 1896-1901) provide the sole available source of information on many aspects of the life of the prehistoric American native.

The period of the apogee and glory of the order was the first century of its existence. Although its militant spirit did not wane, after the Thirty Years' War its activity was greatly restricted in Protestant countries. Moreover, as a liberal and tolerant temper became injected into Catholic circles under the influence of the Enlightenment, the success of the Jesuits declined proportionally in those regions where they had formerly been supreme. Their hold over Catholic countries had already slackened when as an aftermath of their hegemony they won a twofold victory in France: the revocation of the Edict of Nantes in 1685, which to a considerable extent was the result of their influence upon Louis XIV; and the destruction of Jansenism, which was entirely their work. Between the Jansenists, adherents of a pietistic movement drawing its inspiration from a reversion to the ideals of primi-

tive Christianity, and the Jesuits a literary controversy had raged since 1643 on the question of communion and penance. In 1656 Blaise Pascal entered the fray with his celebrated *Lettres provinciales*, a mordant satire on the moral and political views of the Jesuits. The Jesuits were able through their superior position at the court to obtain the burning of Pascal's book in 1660, and in 1713 the bull *Unigenitus*, which outlawed the whole Jansenist movement. But Pascal's condemned ideas continued to exert pressure. In the seventeenth century as in the nineteenth the Jesuits saw many of their pupils develop into outspoken enemies: Galileo, Descartes, Bacon, Taine and Hoensbroech are only prominent examples.

After curtailing the influence of the order the Enlightenment finally led to its suppression. The rationalist spirit although nowhere attaining the same potency as in France penetrated even Spain and Portugal; in the second half of the eighteenth century there were important ministers in almost every European government—Aranda, Pombal, Choiseul, Tanucci, Kaunitz—who were more or less swayed by the ideas of the *philosophes*. In 1759 the Jesuits were expelled from Portugal; in 1764, two years after the Parlement of Paris had decreed the suppression of all Jesuit colleges, the order itself was dissolved in France; in 1767 Spain and Naples banished it; and the following year Parma followed their example. These governments jointly importuned the pope to take the ultimate step of abolishing the order in its entirety and in 1773 Pope Clement XIV fulfilled their request with the bull *Dominus ac redemptor noster*. In all probability Clement's action was a reluctant surrender to overwhelming pressure. He justified it on the grounds that the Jesuits menaced the peace of the church by their conflicts among themselves, with the secular clergy, with other orders and with the princes. The friction necessarily created by the nature and methods of the Society of Jesus is in fact the explanation for the circumstance that the Catholic governments in the eighteenth century joined the Protestants in hostility to the order and that the demand for its dissolution emanated from Catholic quarters. A strong popular sentiment supported this demand. The age of the Enlightenment, it is true, looked with disfavor upon the whole system of Catholic orders, regarding the enormous expansion of the convents and the not uncommon idleness of their inmates as an affront to "reason." But the Jesuits had given more grievous

and more urgent causes for complaint, which account for their suppression while the other orders survived.

Prominent among these causes was the intolerance of the Jesuit outlook and the basic inflexibility of their educational system—an inflexibility which gravely threatened the continued existence of the disintegrating Catholic church. Until their suppression the Jesuit colleges still surpassed all other Catholic schools. But the spirit of the age demanded compromise with the principles of "reason." No criticism impelled the Jesuits to transcend confessional limits or to modify the compound of religious propagandism and humanism which they had created for all time in the sixteenth century.

A serious source of friction was provided by Jesuit influence in affairs of state. This influence had at times, particularly in Spain, Portugal and the Italian states, amounted almost to omnipotence not only in matters of religious policy but in the secular concerns of governments; in addition to its constant entrée into royal circles through confessorships and court tutorships the order had had representatives, like Father Nidhart in Spain, Father Fernandez in Portugal, Father Lachaise in France, Father Vota in Poland and Russia, in official diplomatic and ministerial posts. But even at its apogee the political status of the order had never been safe from intermittent strictures and sometimes from more violent reaction. Charles V and Philip II always viewed it with distrust. From 1594 until 1604 the order was banished from France after its holdings had been confiscated. In 1606 the Republic of Venice expelled it for fifty years. In the eighteenth century, although Jesuit confessors still held stoutly fortified positions in most royal families, the policy of the Catholic governments toward them had tended to a constantly growing extent to turn upon political considerations. One force with which the order collided was national particularism, naturally skeptical of these potentates who not only were servants of a foreign general but were themselves frequently foreigners in the countries which they served. Although the order officially prohibited such activity, they could on innumerable occasions be plausibly accused of unsolicited and inopportune meddling and of intrigues that did not stop at spying out state secrets. Numerous works were written, especially in Gallican France, to demonstrate that Jesuit doctrines were dangerous to the state. Whatever justification for antireligalism was offered by individual Jesuits like Mariana,

Suarez and Bellarmine, it can hardly be proved that they countenanced tyrannicide on principle or that they had a part in the murder of Henry IV of France. Popular imagination has shown little reserve in its imputations against the Jesuits.

The wealth of the society is for the most part matter of legend; the Jesuits themselves preserved a discreet silence with regard to their financial affairs. Undoubtedly a great part of their income was required for the maintenance of their institutions; and much of what appeared to be opulence was the result of efficient administration. To a large extent their income was derived from endowments, from the estates which their members were required to transfer to the order after entrance and from the operation of their other holdings; but this amount was supplemented by vast commercial enterprises, such as the lucrative colonial trade carried on by the Jesuit missions in India, in Mexico, in the Antilles and in Brazil. If critics of the order disapproved of its participation in trade, they were still more scandalized at its banking and speculative activities; that Father Lavalette, whose bankruptcy cost his creditors over 2,000,000 livres, had acted like many other Jesuit speculators without the consent of his superiors did not save the order from a renewed outburst of popular resentment, which culminated in its dissolution in France. Besides helping to alienate public opinion and creating a temptation for the confiscatory impulses of princes the Jesuits' wealth aroused the jealousy of other orders and of the secular clergy. The attitude of the latter, which was to some extent responsible for the dissolution, must be explained in part by envy not only of the wealth of the Jesuits but of their privileges and exemptions, of their influence in high circles and in general of their overshadowing power. It must be remembered that in 1759 the order still had 22,589 members in 41 provinces, 609 colleges, 171 seminaries and 270 missions.

But other motives were operative in the continuous attacks leveled against the Jesuits by sections of the church from the time of the Dominican Cano (1509-60) until and following Pascal. The doctrine of grace formulated by the Jesuit Molina in 1588 was combated with particular violence. The order was often accused of giving unconditional support to the views of its members. Its identification of itself with the divine church—this position is clearly expressed by the great general Aquaviva—and the inferences it drew as to its own infallibility were

flailed by Catholic theologians as sophistical and even heretical. Certain generals could be pointed to who had disregarded the views of the pope on controversial doctrines and made their own pronouncements binding upon the order. In spite of all efforts to secure cohesion, including the system of espionage, which it employed with such elaborate finesse among its members as well as in its relations with the laity, the order no longer presented a united front against its enemies in the eighteenth century: internal dissensions hastened its end.

Irrespective of the criticisms urged by the church it cannot be denied that the Jesuits were often led by anticipation of victory to carry to excessive lengths their policy of adaptation to the world. To win the masses they suffused religion with sensuousness. Their missionaries transmuted it into a superstitious cult. While not universally approved by their members their characteristic ethical values represented the perfection of casuistry; equivocation, mental reservations, the doctrine of probabilism, according to which an act could be assumed to be legitimate if it was not known to be prohibited, were resorted to and condoned to provide the necessary latitude for their activity. As proselytizers among the Protestants they shunned no machination however clandestine to attain their goals; families were disrupted, children alienated from parents and wives from husbands. Such methods might be justified by the order on the premise that the supreme crime was heresy, but they helped to rob it of the popular confidence which was one of the necessary means to its ends.

If the scientific contributions of their missionaries be left out of consideration, the permanent results of their work outside Europe were not proportional to the extraordinary zeal manifested. In Japan, China and Korea at least they made serious blunders; in Japan, for instance, political entanglements resulting from their activity have been held responsible for a large part of the antiforeignism which led to the expulsion of all Christians in the seventeenth century. In the Philippines, the Marianas Islands and Central and South America they had more success. The famous Jesuit "state" of Paraguay, which the Jesuits organized under Spanish sovereignty and administered from 1609 until it was dissolved by the Spanish government in 1767, was a virtual autocracy controlling the native population by communistic economic and social regulations. To counterbalance the extravagant charges leveled against the Jesuit administrators

by their opponents the state has been praised as a communistic utopia, even by such enemies of Catholic orthodoxy as Voltaire, Diderot and Lessing. That the natives received good treatment from the Jesuits is beyond doubt. Complications between the state and Portugal and Spain were used by both governments as a convenient case against the Jesuits and became one of the important alleged causes for the dissolution of the order.

The cultural and political reaction after the Napoleonic era and the drift toward ultramontanism brought the immediate restoration of the order by the bull *Sollicitudo omnium ecclesiarum* of 1814. With the nucleus of several hundred adherents in England and in Russia, countries where the absence of papal authority had enabled the Jesuits to survive after the dissolution, the order became quickly reorganized in all countries. Bishops as well as the Catholic nobility helped to create for them new spheres of activity and provided them with abundant material resources so that they were able to recover from the confiscations which had accompanied the dissolution. Aristocratic converts in Denmark, for instance, gave them notable assistance. Where educational institutions were transferred to them, as occurred for a time in France, in Spain and in Portugal, they received state subsidies. The order itself established numerous new colleges in all parts of the world, even founding universities, as at Tokyo, and taking over theological faculties, as at the universities of Innsbruck and Louvain.

Without repudiating its original purpose in the slightest degree the order considerably modified its policies to fit the changed conditions. Usually it abstained from high politics and became resigned to the loss of the strongest prop of its early period, the Catholic court. But at the Curia it was supreme; it directed official theology and guided the rapid course of ultramontanism until that movement reached its logical conclusion in the decree of papal infallibility by the Vatican Council of 1870. It made itself the champion of conservative interests, which accounts for its popularity in aristocratic circles. But at the same time it promoted if it did not create "political Catholicism," the policy of utilizing parliamentarism and democracy for the furtherance of the church.

For the liberal bourgeoisie—the descendants of the eighteenth century enemies of the order—the Jesuits continued to typify Catholic obscurantism and intolerance, popery and authoritari-

anism. Wherever this class triumphed and not infrequently on other occasions they were banished: thus they were excluded from Spain in 1820, in 1835, in 1868 and in 1931; from Portugal in 1834; from Switzerland in 1847; from Russia in 1820; from France in 1880 and in 1901. Both the individual Italian states and after 1860 the Kingdom of Italy repeatedly expelled them. A reaction in favor of Catholicism, the vanishing of the Catholic phobia and sometimes the emergence of a radical menace might lead to their readmission or to the extension of privileges. France permitted them to return in 1914 for educational purposes; Germany lifted the ban, although leaving minor restrictions, in 1917. As soon as it was expelled from one country the order intensified its activities elsewhere. Exiled Jesuits have swollen the ranks of foreign missionaries. Many of them have migrated to Protestant countries; it is only in England, the United States, Denmark and Sweden that the order has been unmolested since its restoration.

In 1917 the order had about 17,000 members and was continuing to grow. Today its schools are united into a central system by their affiliation with the Collegium Romanum (or Università Gregoriana), which was reestablished in 1824. Preaching, home and foreign missions and nursing remain a constant part of the order's program. It takes a lively interest in all fields of scientific inquiry, occasionally giving to these investigations a highly modern appearance. In theology and in historiography the Jesuits are still the guardians of rigid orthodoxy; and within Catholicism they have in addition to enthusiastic supporters many adversaries who disapprove of their intolerance and intellectual bias. But the order continues to exercise a powerful influence through its energetic literary and polemical activity; through its magazines, the most important of which is *Civiltà cattolica* (1850- ); and through its carefully selected and excellently trained members.

WALTER GOETZ

See: RELIGIOUS ORDERS; MISSIONS; INQUISITION; JANSENISM; REFORMATION; ENLIGHTENMENT.

Consult: For source material: *Institutum Societatis Jesu*, 2 vols. (Rome 1869-70), containing statutes of the order, plans of study, the Spiritual Exercises, etc.; *Monumenta historica Societatis Jesu*, a collection of documents published in Madrid since 1894.

See also: Heimbucher, Max, *Die Orden und Kongregationen der katholischen Kirche*, 3 vols. (2nd ed. Paderborn 1907-08); Hoensbroech, Paul von, *Der Jesuitenorden, eine Enzyklopädie*, 2 vols. (Berne 1926-27); Böhmer, H., *Die Jesuiten* (4th ed. Leipsic 1921), tr. by Paul Z. Strodach (Philadelphia 1928); Mater, A.,

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JEVONS, WILLIAM STANLEY (1835-82), English logician, economist and statistician. Jevons, the son of an iron merchant, was brought up in Liverpool and at the age of fifteen was sent to University College School, London. In 1851 he entered the University College, studying chemistry, mathematics, Greek and Latin. In the first he was a noteworthy student and in 1853 was offered the post of assayer to the newly established Royal Mint in Sydney, New South Wales, where he arrived a year later. In Sydney his spare time was first devoted to meteorology, but he was soon reading Adam Smith and the *Reports* of the Social Science Association. As his interest in human phenomena grew he read moral philosophy and carried out a social survey of Sydney, of which the manu-



script, but not the map which accompanied it, is extant.

He resigned in 1859 to return to University College and study logic and political economy. After touring the Australian gold fields he sailed by way of Peru and Panama to New York and traveled in the United States. He passed the M.A. examination in logic, philosophy and political economy in June, 1862; he had already been actively at work on statistics and had published two diagrams. These were followed by two papers read at the British Association for the Advancement of Science in 1862, which foreshadowed all his future work on the mathematical theory of economics and on the study of periodic commercial fluctuations. In 1863 he was appointed to Owens College, Manchester, as tutor, where he later became professor; he had just published his first important work, *A Serious Fall in the Value of Gold* (London 1863), which was followed by *Pure Logic* (London 1864) and *Elementary Lessons in Logic* (London 1870). His attention was next turned to the coal question and then to the further development of his mathematical theory of economics. After publishing *The Theory of Political Economy* (London 1871; 4th ed. by H. Stanley Jevons, 1911) he turned again to logic and wrote the *Principles of Science* (2 vols., London 1874; 2nd ed. 1877). In 1876 he resigned from Manchester, having accepted the chair of political economy at University College, London, but resigned in 1880 because of ill health and a desire to devote his whole time to writing books that he had planned, especially his *Principles of Economics* (ed. by Henry Higgs, London 1905). He was drowned in August, 1882, before the *Principles* was finished.

Jevons' writings fall into three main classes: papers giving the results of his investigations in natural science; books and papers on logic and moral philosophy; and books, pamphlets and articles on political economy and social reform. He gained reputation by writing *The Coal Question* (London 1865, 2nd ed. 1866), which led to the appointment of a royal commission to report on available coal reserves. His argument, which has been much misunderstood, was that although the actual exhaustion of its coal seams was a remote contingency Great Britain must suffer at no distant date from the increased cost of mining coal at great depths and from the competition of coal, iron and steel industries in Europe and America, assisted in their growth by vast reserves of coal which could be cheaply mined.

Jevons' studies of the science of logic, in which he was much engaged during the years he spent at Manchester, developed on lines parallel with his work in mathematical economics. Jevons followed Boole in his mathematical analysis of logic but simplified many of Boole's methods. He developed his theory of logic as an exact science and his conception of scientific method at greatest length in the *Principles of Science*, a book which is still of great interest to mathematicians and logicians.

His economic works which are now best known relate to economic theory, fluctuations of prices (with index numbers), the causes of commercial crises, and money and banking. At a time when English thought was dominated by John Stuart Mill's exposition of economics Jevons developed the theory of utility, distinguishing final degree of utility (i.e. marginal utility) from total utility, applying the conceptions and symbols of calculus, which led to the equation of exchange, and thus laid the foundation on which economic theory was elaborated by later English writers. Although he was ignorant of the fact, his method had been anticipated by Gossen; it was simultaneously but independently discovered by Walras and was very similar to that of the Austrian school (Menger and Wieser). Jevons declared that value rested on utility, not on cost of production as taught by Mill. Although he overemphasized demand as determining price, careful reading shows that he by no means ignored the effect of the supply of the factors of production.

His well known index numbers of prices were first calculated for the period from 1845 to 1862 and later extended back to 1782 (*Investigations in Currency and Finance*, ed. by Herbert S. Foxwell, London 1884; new ed. 1909). His statistical work on periodic fluctuations in the money market served as a model for later investigators; but his theory of the periodicity of commercial crises has been misrepresented. He did not suggest that sun spots were the cause of crises but pointed out that the periods of sun spots and crises, also those of famines in India, corresponded closely, and that it was reasonable to suppose that variations of solar radiation would affect harvests in tropical and semitropical regions and thus the demand for British goods. His *Money and the Mechanism of Exchange* (London 1875) was frequently reprinted and translated.

In his writings on general and social economics Jevons took the utilitarian standpoint; he was

an uncompromising free trader and a disbeliever in the efficacy of trade unionism to raise wages. He favored cooperation and schemes of workers' copartnership.

H. STANLEY JEVONS

Consult: *Letters and Journal of W. S. Jevons*, ed. by H. A. Jevons (London 1886), Royal Society of London, *Proceedings*, vol. xxv (1883) i-xii, Bohmert, W., *W. Stanley Jevons und seine Bedeutung für die theoretische Nationalökonomie in England* (Bremen 1891); Young, A. A., "Jevons' 'Theory of Political Economy'" in *American Economic Review*, vol. ii (1912) 576-89; Amoroso, Luigi, "W. S. Jevons e la economia pura" in *Annali di economia*, vol. ii (1925) 83-106.

JEWISH AUTONOMY in the Diaspora has been one of the most uncommon developments in social history and in the present day social process. A people dispersed in all countries of the civilized world has succeeded through twenty-five centuries in preserving to a greater or lesser extent its personal autonomy, adapting it to the most diverse political and social forms of various epochs and countries.

In the ancient Hellenistic cities of Asia Minor and northern Africa the *gerousia* (council of elders) of the Jewish community functioned alongside the Greek city council, the *boule*. The Seleucid and Ptolemaic kings used the self-governing agencies of the Jewish communities for the collection of taxes from the Jewish population. In Alexandria there was even a centralized form of Jewish self-government with ethnarchs, who according to Strabo (first century B.C.) ruled their "own people and secured the enforcement of laws as the ruler of a free *politeia*" (Josephus, *Antiquities*, xiv: vii, 2); a large sized *gerousia*; and a special tax inspector, or *alabarch*. During the early period of Roman rule in western Asia there were frequent conflicts in the cities between Greeks and Jews. The Greek municipalities infringed upon the autonomy of the Jewish communities, which were forced to appeal to Rome for the protection of their rights. Julius Caesar and Augustus took the side of the Jews and ordered their proconsuls to see that the Jews in the cities of Asia Minor and of the Ionian Islands were allowed "to live in accordance with their own laws and the customs of their ancestors," were not conscripted for military service or summoned to court on Saturdays or holidays, that their communal affairs were not interfered with and that they were not prevented from sending contributions for the temple in Jerusalem.

Beginning with the third century of the Christian era the Jewish communities which enjoyed

the broadest autonomy were those in Mesopotamia and the adjoining provinces of the Persian monarchy of the Sassanidae, which later (in the eighth century) became part of the caliphate of Bagdad. Here the self-government was centralized in the hands of two separate powers, the temporal and the spiritual. The exilarch (*resh-galutha*) was the official intermediary in fiscal matters between all Jewish communities and the central government; he appointed judges and administrators in the communities and transmitted their petitions to the supreme government bodies. On the other hand, the learned jurists, heads of the Talmudic academies (*roshe-jeshiboth*) in the Babylonian cities of Nehardea, Sura and Pumbeditha, who received during the Arab rule the title of *geonim*, were officially recognized interpreters of the law and practically the legislators and supreme spiritual leaders of the Jewish people. When a separate Fatimite caliphate had been formed in Arabic Egypt in the tenth century, the Jewish communities there were given their own exilarch with the title of *nagid*; and they had their own *geonim*, who extended their authority to embrace the surviving Jewish communities in Palestine and maintained it there until the conquest of Palestine by the European crusaders.

As the Jewish hegemonic centers were shifted to Europe during the tenth and eleventh centuries the forms of autonomy changed, although its substance remained essentially the same. In Arabic Spain the function of exilarchs was performed by the Jewish ministers at the courts of the caliphs and emirs and in Christian Spain by the Jewish financial or fiscal agents of the kings. Frequently, however, the Spanish kings dealt directly with the Jewish communities (*aljama*). In Aragon and in Castile the rabbis had vast judicial powers. They tried criminal as well as civil suits and could impose sentences of imprisonment, corporal punishment and even death. The constitutions of Jewish self-governing bodies were drafted in conferences of rabbis and lay delegates of the communities, such as that held in 1432 at Valladolid.

Not so broad in scope, although very durable, was the Jewish autonomy in Italy, France and Germany. In the sixteenth century the Jewish communal council (*congrega*) in Rome consisted of sixty members and was headed by three executives (*fattori*) responsible to the papal authority. In France and Germany the system of self-government centered around the rabbis. The German emperors, who regarded the Jews as

*Kammerknechte* assigned to commercial pursuits with a view to increasing the revenues of the treasury, tried to place at the head of the communities an official who should combine the functions of rabbi and of fiscal agent (*Judenmeister* and *Hochmeister*), but they met with a determined opposition on the part of the autonomous communities. The Jews used to elect from their own midst an intermediary between their communities and the government, known as *shtadlan*, or solicitor; his office was of particular importance at times of persecution on the part of the authorities or of wholesale pogroms. The most prominent *shtadlan* was Josselmann of Rosheim in Alsace in the first half of the sixteenth century, who conducted negotiations on Jewish affairs with Emperor Charles V and with Luther and his associates.

Centralized self-government was carried farthest in the organization of the Jewish communities in Poland in the sixteenth, seventeenth and eighteenth centuries. The unit of self-government here was the *kahal*, or Jewish communal council, which functioned alongside the municipal council of the Christian city. It was an oligarchic institution whose members, elected annually during Passover week, owed their position to either learning or wealth. The *kahal* appointed from its own membership an executive of seven persons (known as *roshim* and *tuvin*, elders and optimates) and several groups of officials: judges (*dayanim*), tax collectors, curators (*gabaim*) of schools, synagogues and charities. In each district (*galil*) *kahals* of the smaller towns were grouped around that of the large city. These district *kahals* were combined in each region or province (*medinah*, *eretz*) into a regional union, which held periodic conferences (*vaad ha-medinah*) for the apportionment of state and communal taxes between the several communities and for action upon other matters of self-government. There were five such provinces in Poland as the country was then constituted: Great Poland, Little Poland, Red Russia and Podolia, Volhynia and Lithuania. These provinces formed in turn a general kahalic union, which met periodically in general congresses (*vaad ha-arotzoth*) attended by rabbinical and secular delegates from the principal Jewish communities all over Poland. The congress acted on constitutional matters, issued regulations (*takanoth*) for communal institutions, passed upon controversies between individual *kahals* and upon grievances of private persons against *kahals* and effected the general appor-

tionment of taxes among the several provinces. In the seventeenth century Lithuania withdrew from the general kahalic union and formed its own "*vaad* of the principal communities." The two congresses, or *vaads*, functioned as officially recognized Jewish parliaments until they were abolished by the Polish government in 1764 on the eve of the dissolution of Poland as a state.

In the old corporate state the several constituted bodies differed in their attitude toward Jewish autonomy. Whereas the central governments found it advantageous to deal with organized Jewish communities and with their official representatives, who assumed responsibility for the payment of taxes and the enforcement of state laws, the Christian municipal bodies resented this as an infringement of their authority and as a privilege for the benefit of a people which was disliked and which competed with the Christian bourgeoisie in commerce and industry. The kings often had to protect the Jews from hostile action on the part of Christian municipalities, merchant corporations and craft guilds, which endeavored to restrict the most elementary rights of the Jewish population, especially its judicial autonomy. In some instances the kings had to yield to the demand of municipal authorities that the Jews be prohibited from residing in specified places.

The rise of the modern state, based upon the principle of civil equality, and the gradual civil emancipation of the Jews dealt a heavy blow to Jewish autonomy in its old form; that is, to the isolation of the Jewish city (ghetto) from the general municipal administration. The national aspect of autonomy was completely lost sight of; autonomy now had to be confined to religious or synagogal administration. The very act which emancipated the Jews in France in 1791 provides that they shall be granted civil equality on condition that they give up all their former "privileges and special laws"; that is, their former autonomy. Napoleon forced the Sanhedrin of Paris in 1807 to renounce the claims of the Jews to the title of a nation, and he converted the Jewish community through the system of consistories and official rabbinate into a section of the police administration of the city. In Russia and Austrian Poland, where emancipation of the Jews came late, they were in the first half of the nineteenth century deprived of the former kahalic autonomy on the ground that it was an obstacle to their "blending with the indigenous population." On the other hand, the assimilated groups of Jews in western Europe formally renounced national

autonomy; they regarded themselves merely as separate religious groups amidst the dominant nations and were contented with self-government within the limits of "synagogal communities" (*Synagogengemeinden* in Germany; *Kultusgemeinden* in Austria). In America a variety of this type of organization was afforded by the various congregations into which the Jewish population was divided. But the vitality of the idea of Jewish autonomy has been demonstrated by the fact that even those who formally deny it have had in practise to restore some of its institutions. Thus arose such centralized forms of self-government as the communal unions in Germany (*Deutsch-Israelitischer Gemeindebund*; *Preussischer Landesverband Jüdischer Gemeinden*). In fact all those local and central organizations never actually confined themselves merely to functions of church administration but performed many national, political and social functions as well; they founded elementary and higher schools of their own, created institutions of social welfare, reacted to political events and often manifested their solidarity with the Jews of other countries.

With the growth of the Jewish national movement at the end of the nineteenth century the concept of Jewish autonomy received its theoretical elaboration and was advanced definitely as either a complete or a partial solution of the Jewish problem. The doctrine of Jewish autonomism based on the premise that civil emancipation was insufficient to solve the Jewish problem was put forward as a national synthesis supplanting the old thesis of national isolation and its antithesis of assimilation. It appeared first in the countries of eastern Europe where the Jewish masses still employed the Yiddish language and had a network of national schools. Autonomism received a systematic formulation in the writings of Simon Dubnow, who conceived of the Jewish nationality as one bound together by only spiritual and cultural ties and which therefore needed neither a territory nor any other political forms for its national existence. Certain aspects of Jewish autonomism were also developed by Nathan Birnbaum and in socialist circles by Chayim Zhitlowsky, who as leader of the Sejmist party in Russia formulated a program which called for autonomous organization based on a secularized Jewish educational system, the recognition of Yiddish, the spread of agriculture among the Jews and the supervision of such problems as Jewish emigration, hygiene and workers' relief. During the same period the Aus-

trian socialist theorists of national autonomy, such as Renner, Sprenger and Otto Bauer, established the distinction between the national state with an ethnically homogeneous population and multinational states like Austria-Hungary and Russia as well as the important principle of personal cultural autonomy as distinct from territorial autonomy. This latter principle was especially useful to the Jewish theorists in view of the fact that the Jews represented a nationality that was everywhere in a minority and had no solid settlement within a clearly defined territory. As a result of these developments the alliance of Jewish parties known as the Union for the Attainment of Equal Rights for the Jewish People in Russia demanded during the revolution of 1905 the equality not merely of civil status but also of national rights. Similar demands were made by the national Jewish parties in Austria after the introduction of universal suffrage.

The first attempt to give concrete form to these demands was made in the Ukraine after the revolution of 1917. A Jewish national secretariat and later a Jewish national council were formed and the principle of personal national autonomy was given legal recognition. The civil war, however, put an end to these efforts. As a result of the various treaties after the World War varying degrees of national autonomy were given to the Jewish population in Poland, Lithuania, Latvia, Estonia, Czechoslovakia, Rumania, Greece, Albania and Bulgaria. In Lithuania a Jewish ministry was created in June, 1919, and by the law of March 4, 1920, the Jewish communities received legal sanction to levy taxes and to supervise Jewish educational and cultural activities. As a result of the political changes in 1924 and 1925 most of these institutions were abolished. In general the development of intense nationalism among the ruling nationalities and the force of economic rivalry have tended to reduce most of the provisions for Jewish autonomy in all these countries to a dead letter. Complicating the matter still further is the fact that the Jews themselves are divided on questions of language, religion and on the very problem of Jewish nationality. In Soviet Russia the problem of Jewish autonomy has been dealt with in the same manner as that of other national minorities—on the basis of territorial distribution and language.

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See: JUDAISM; DIASPORA; GHETTO; JEWISH EMANCIPATION, MINORITIES, NATIONAL; AUTONOMY; NATIONALISM; ZIONISM.

Consult: Mommsen, T., *Römische Geschichte*, vol. v

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**JEWISH EMANCIPATION** is that development which has been responsible for transforming Jewry from a distinct corporate group, concentrated in urban ghettos and living a social and intellectual life essentially different from that of the surrounding population, into a more or less integral part of the general population among which it resides. In a narrower and more technical sense it is the legal and political development which substituted the principle of equal rights and duties for the previous system of

rights and duties, which were always special in character although they varied from place to place and from period to period. While the term derives analogically from the emancipation of slaves and Catholics (it was apparently first used by Zopf in 1831, two years after the British Catholics gained their signal victory), the history of Jewish emancipation is not strictly analogous. This emancipation began to be effective in western Europe and America in the eighteenth, in central Europe in the nineteenth and in eastern Europe (where the great majority of the Jewish people is to be found) in the twentieth century. This drift largely reflected general political and economic developments; the spread of industrial capitalism and democratic institutions was generally accompanied or followed by Jewish emancipation. The slow progress of the emancipatory movement in eastern Europe, however, and its susceptibility to frequent setbacks have been due in part to complex problems arising from the relative density of Jewish population in this region. While emancipation in the wider sense is still incomplete, legal and political emancipation—express or implied constitutional equality of rights—exists for Jews everywhere except in a few backward countries. In such countries as Poland, Rumania and Hungary there is still great disparity between legal theory and practise.

Conscious moves toward equalization of rights began in the eighteenth century, when the development of capitalism made the Jewish merchant and industrial entrepreneur a welcome acquisition to western countries. After the Reformation had established the principle of freedom of conscience and the modern state had begun to transform corporate mediaeval society into a society of more or less equal individual citizens, the legal emancipation of the Jews became inevitable. It was long hindered, however, by the complex structure of the Jewish group, involving peculiar religious, ethnic, social and economic characteristics and especially that purest expression of segregate, corporate life, the extensive system of Jewish autonomy. Non-Jewish opponents of emancipation declared that the existence of the Jewish "state within a state" would always prevent the Jews from identifying themselves with the main body of citizens; some elements of Jewry rejected equality of rights in so far as it endangered their inherited mode of life or their vested interests in the autonomous community. The latter type of opposition was particularly conscious and powerful in Holland

in 1796, in Baden in 1846 and in Galicia from 1848 to 1867; its most representative spokesmen were Rabbis Eger of Posen and Schreiber of Pressburg. Before 1850 frequent consideration was given to a proposal (which was finally abandoned) to distinguish between equality in civil law and that in public law (*privatburgerliche* and *burgerliche Gleichberechtigung*) and to remove only the disabilities affecting economic activities while continuing both the political disfranchisement of Jews and their rights of self-government.

Down to the end of the nineteenth century it was generally assumed that there was a necessary connection between emancipation and the assimilation of the Jews to surrounding civilizations. Debate was limited to the question of whether assimilation had to precede emancipation or whether emancipation was to serve as the strongest stimulus to assimilation. As the failure of emancipation to solve the Jewish question immediately bred disillusion and as modern antisemitism and Jewish nationalism arose, the idea of emancipation became divorced from that of assimilation. Equality of rights was now demanded both by Jews and by non-Jews who affirmed that the Jews were an ethnically distinct group. The minority rights guaranteed to the Jewries of several European countries by international treaty and independently adopted by the Soviet Union supplemented in theory the principle of equality. In America and western Europe minority rights in the technical sense were neither imposed by the peace treaties nor are they sought by the Jews themselves. An attempt made at the Council of the League of Nations to extend minority rights to all member countries failed.

The progress of emancipation was frequently stimulated in neighboring countries by states which had already granted equality. Prussia in particular excused several such interferences with the internal affairs of neighboring states by declaring that too many Jews were being attracted to her territories. Humanitarian reasons were frequently voiced, especially in the international gatherings from the congresses of Vienna and Aix-la-Chapelle to the Peace Conference of 1919. The emancipated Jews of the western and later of the central European countries also agitated for the emancipation of coreligionists abroad. After a period of hesitation, during which they had tried to accentuate their new national allegiance by severing ties with Jewries of other countries, came the active inter-

ventions of Sir Moses Montefiore and the Rothschilds for the oriental and east European Jews. In 1860 the Alliance Israélite Universelle was established in Paris to defend the rights of Jews throughout the world. With the same ends in view the British Joint Foreign Committee was organized in 1878, the American Jewish Committee in 1906 and the American Jewish Congress in 1916. At the Versailles Peace Conference in 1919 the Jewish question was raised by the Comité des Délégations Juives, which included representatives from the United States and several central and east European countries and cooperated with delegations of British and French Jews. A Jewish world congress with similar aims has long been debated but never convoked.

Although Holland in 1593 was the first western European country to readmit Jews after the mediaeval expulsions and to grant them extensive rights, it was an Englishman, John Toland, who first advocated full emancipation in his *Reasons for Naturalizing the Jews in Great Britain and Ireland, on the Same Foot with All Other Nations* (London 1714).

Pelham's Jew Bill of 1753, which was to remove the obstacles to the naturalization of Jews in England, provoked such public opposition that it had to be revoked in 1754; and not until 1829 under the impetus of Catholic emancipation was the struggle for Jewish emancipation reopened, with such liberals as Robert Grant, Lord Russell and Macaulay as its chief protagonists. Five emancipation bills adopted by the House of Commons between 1834 and 1857 were rejected by the Lords. In 1858 two House acts enabled Lionel de Rothschild, five times demonstratively elected to Parliament by the City of London, to take his seat. Subsequent amplifications in 1866, 1871 and 1878 opened to Jews the highest government and university offices. In other regions of the British Empire Jews have long enjoyed full equality; in Australia, New Zealand and South Africa, for example, since colonization.

As early as 1740 the Naturalization Act for the British American colonies dispensed with Christian ceremony for "such who profess the Jewish religion." The Virginia Declaration of Rights of 1776, the Constitution of the United States and its First Amendment in 1791 established general equality without specifically mentioning Jews. Remaining minor disabilities were gradually removed by state legislatures, in North Carolina as late as 1868. Most Latin American

republics proclaimed constitutional equality of all citizens in the early years of independence. In the binational parts of Canada there have arisen difficulties concerning the demand for state support of Jewish schools equal to that actually given to the Protestant (English) and Catholic (French) communities.

Of greater significance for the masses of Jews on the European continent was the emancipatory work of the French Revolution. The abolition of the corporal tax by Louis XVI in 1784, the appointment in 1788 of a committee headed by Malesherbes to study the Jewish question, Mirabeau's pamphlet of 1787 on Moses Mendelssohn and Jewish political reform and an essay contest to encourage the discovery of means for making the Jews "happy and useful" held by the Metz Königliche Gesellschaft der Wissenschaften und Künste in 1787 adumbrated forthcoming changes. Discussion of the Jewish question occupied a prominent place within and without the National Assembly from 1789 to 1791. Energetic advocates of emancipation were Abbé Grégoire, Mirabeau, Duport and Robespierre; leading opponents were Abbé Maury, representing conservative and clerical forces, and Reubell, spokesman of the Alsatian third estate, whose *cahiers* had expressed deep grievances against Jewish money lenders. In 1790 Jews of Portuguese and Spanish origin and those of Avignon and in 1791 all other Jews in France were declared full fledged citizens, and the civil equality of individual Jews was maintained even during the revolutionary drive against the various religious creeds.

The impact of these revolutionary measures was soon felt in all territories which came under French domination. The Jews of the Rhineland, Italy and Belgium were automatically enfranchised. Most important in view of its numerical, economic and intellectual importance Dutch Jewry was fully emancipated by the new Batavian Republic in 1796. The slow pace of Jewish assimilation as well as the economic conflict in Alsace led to reaction in France. Aroused by the ethnic tenacity and apparent lack of patriotism of the Jews, Napoleon convoked the assembly of Jewish notables in 1806 and the Great Sanhedrin of Paris in the following year. To twelve questions put by the government the carefully selected Jewish representatives gave answers largely prepared by Napoleon, refusing only to encourage intermarriage as a means of assimilation. In 1808 Napoleon decreed the reorganization of Jewish communal life under rigid govern-

ment control and put the Jews of most French provinces, the Rhineland and Italy under severe disabilities. Modified several times by the emperor, this decree expired in 1818, when even the reactionary government of Louis XVIII did not renew it. After the revolution of 1830 the last vestiges of discrimination were removed by law; beginning in 1831 the national Treasury subsidized the rabbinate, as it did Protestant and Catholic clergy, and in 1846 the Jewish oath (*more judaico*) was abolished. Strangely enough despite the influence of France in stimulating Jewish emancipation in general it is only in the French colonies of Tunis and Morocco (in addition to such backward regions as Abyssinia and Yemen) that the Jews are still legally as well as practically unemancipated. In Holland in 1815 and in Belgium in 1830 emancipation was also supplemented by state subvention to the Jewish cult. In Portugal and Spain, where Jews began to resettle during the nineteenth century, they were not definitely emancipated until the adoption of republican constitutions in 1911 and 1931 respectively. A Spanish decree of 1924 and more emphatically one of 1932 enable descendants of the refugee Spanish Jews of 1492 to naturalize as Spanish citizens regardless of their residence abroad.

In central Europe Jewish equality was demanded by Lessing in his *Nathan der Weise* (1779) and by Christian Dohm in his *Über die bürgerliche Verbesserung der Juden* (2 vols., Berlin 1781-83). Joseph II's Edict of Toleration in 1781 indicated the imperial government's awareness of the necessity of a change in Jewish status. Under the impulse of the French Revolution Westphalia in 1808 and Frankfurt in 1811 granted full equality and several other states granted limited equality. Even counter-revolutionary Prussia removed Jewish disabilities (except exclusion from government office) in 1812.

The period of Restoration, romanticism and the "historical schools" was one of general reaction. Attempts of Austria and Prussia at the Congress of Vienna and the German Diet to establish a uniform liberal policy in the new Germanic Confederation failed; the relevant article 16 of the Acts of Confederation was a compromise, ambiguous at the crucial point. From 1815 to 1824 the struggle between the newly reorganized "free cities" and the Jews assumed international proportions. Although Austria, Prussia, England and Russia, as signatories of the Treaty of Vienna, vigorously and repeatedly protested against anti-Jewish measures, only Frank-

fort was compelled to conclude an agreement with the Jewish community in 1824. Bremen and Lübeck expelled all Jews in 1821, and most other German states failed to grant them a uniform status. Prussia, for instance, retained in the provinces annexed in 1815 twenty different systems which ranged, as did those in the rest of Germany, from full emancipation to full corporate mediaeval segregation. Under the leadership of Gabriel Riesser the struggle entered a new stage with the revolution of 1830. After the extension of Jewish rights by Hesse in 1833, Brunswick in 1834 and Prussia in 1847, the movement was crowned with temporary success through the acts of the Frankfurt National Assembly and the Austrian, Hungarian and Prussian diets in 1848-49. Following a few years of reaction, the Austrian and Hungarian constitutions of 1867, a law of the North German Confederation in 1869 and the German imperial constitution of 1871 definitively established equality of rights for all citizens. Since then there have been in Germany and Austria only minor administrative deviations, although the principle itself has been the target of antisemitic attacks from the days of Stöcker and Luger to those of Hitler. In Hungary, however, where full equality had existed from 1867 until 1919, there have been ever since serious invasions of Jewish rights; and the establishment of minority rights by the Treaty of Trianon in 1920 has provided only a legal solution of the problem. In Czechoslovakia the Jews were granted both equality and minority rights from the outset, but their numerical insignificance in the former Austrian provinces and their conservative mode of life in those previously under Hungarian rule complicate the application of minority rights on the lines adopted for the German and other national minorities.

The restoration of legitimist rulers in Italy in 1815 was accompanied by the restoration of Jewish disabilities. In Rome the ghetto and the Inquisition were reinstated; in Piedmont a law requiring wearing of the badge was almost adopted; Parma alone held to emancipation. The reestablishment here and there of the principle of equality by the revolutionary upheavals of 1830 and 1848 was largely ephemeral; but agitation, initiated particularly by Massimo d'Azeglio, the author of *Della emancipazione civile degli israeliti* (Rome 1847), finally brought about enfranchisement in Sardinia in 1848, in Lombardy in 1859 and in the new kingdom of Italy by its constitution of 1861, which was soon extended

to Venice and Rome. Since then Italian Jewry has enjoyed full equality.

Most Swiss cantons stubbornly resisted even the admission of Jews, until the intervention of foreign powers (the United States in 1857, Holland in 1862 and France especially in 1864) forced the Swiss Confederation to exempt foreign Jews from discriminatory laws. In 1874 the Swiss constitution established full equality of rights. In Denmark the Jews obtained extensive rights in 1814, were admitted to municipal offices in 1837 and achieved full emancipation in 1849. The provinces of Schleswig and Holstein did not enfranchise Jews until 1854 and 1863 respectively. Jews were not allowed to settle in Sweden until 1782, and the attempt of Charles XIV to enlarge their rights failed. They were not permitted to own land before 1860, to vote before 1865 or to hold office before 1870. After the admission of Jews to Norway in 1851 disabilities were gradually removed; from 1891 on Jews were no longer barred from public office.

In the eastern regions of Jewish mass settlement the first signs of forthcoming change were perceptible in Poland during the last years of its independence. In 1882 an anonymous writer influenced by Dohm and Joseph II published in Polish a widely read pamphlet "On the Necessity of Jewish Reforms in the Lands of the Polish Crown." The Quadrennial Diet (1788-91) discussed the question without reaching a definite decision. Even in the short lived duchy of Warsaw, whose constitution of 1807 established the principle of equality in imitation of France, Jewish political rights were abolished after one year. In the part of Poland annexed by Russia agitation for emancipation never went beyond literary controversy, and even after the Jews of Posen and Galicia had been emancipated by Prussia and Austria conditions in Russian Poland remained unchanged except for a minor improvement under Wielopolski in 1862. As a result of the revolution of 1905 and the German occupation of 1915 some disabilities were removed, but full legal emancipation (including the granting of minority rights) awaited the Treaty of Versailles in 1919.

The peculiar structure of Russian society lent to the problem of Jewish emancipation novel and contradictory aspects. At the very beginning of Russian domination Catherine II admitted Jews to participation in municipal government while laying in 1791 the foundation of the future Pale of Settlement. Throughout the following century numerous imperial committees on the Jew-



ish question insisted upon assimilation as a prerequisite of emancipation. There seldom appeared a protagonist of full emancipation among opposition leaders or among the Jews; the Decembrist Muraviev was a rare exception. As industrialization proceeded under Alexander II exceptional laws against the Jews were mitigated, but beginning in 1880 policy was reversed until disabilities reached their height in the May Laws of 1882. Even after the revolution of 1905 Jews although reluctantly granted the franchise continued to suffer from severe discrimination. The revolution of February, 1917, proclaimed the principle of equality, reaffirmed by all the Soviet republics after October. The new independent states of Finland, Estonia, Latvia and Lithuania retained some old Russian laws but were forced to recognize legally the civic and political equality of all inhabitants as a prerequisite of their admission to the League of Nations.

Intolerance brought about international entanglements in Rumania even before that nation obtained full independence. By declaring all but an insignificant minority of Jews to be aliens the Rumanian government evaded the safeguards of general equality imposed by the Congress of Berlin, which had granted the country independence by treaty in 1878. Recurrent interventions of treaty signatories availed little. Only the Treaty of Bucharest in 1918 and more peremptorily those of Saint-Germain and the Trianon in 1919 emancipated the Jews, the last also granted them minority rights.

The other Balkan countries gave Jews full rights after emerging from Turkish domination: Greece as early as 1830, Bulgaria in 1878 and Serbia in 1878 and 1889 (from antecedents reaching back to 1817). Turkey, possessing an altogether different legal system, could proclaim the principle of equality in 1839 and 1856 without thereby altogether abolishing the disabilities of non-Moslems. Emancipation was achieved only by the Young Turk constitution of 1908, which followed western models. In the treaties of 1919-20 also Turkey and the Balkan states assumed international obligations to grant special rights to their minorities. The mandated succession states of Turkey (Palestine, Syria and Iraq) are based upon the principle of equality.

Although equality has been established in all advanced countries and minority rights have been enacted in several, there is often a sharp contrast between theory and practise. In many countries discrimination against Jews exists, especially in regard to public offices and employ-

ment in state monopolies. In many, a legal or administrative *numerus clausus* limits the admission of Jews to universities. A tax burden disproportionate both *per capita* and in relation to economic capacity is frequently carried by Jews. State support for their religious and cultural institutions is frequently negligible. Poland, Rumania and Hungary are the most frequent objects of complaint. In Turkey the government succeeded in persuading representatives of Ottoman Jewry along with those of the other minorities to renounce their minority rights. Although of dubious validity in international public law this renunciation facilitates non-application by the government of the clauses in the peace treaties pertaining to minority rights. It is in the Soviet Union that the principle of combined civic equality and national autonomy has been most completely carried out. While intolerant of the Jewish religion and of Zionism, which along with other religious and political movements it regards as actually or potentially counter-revolutionary, and of the propagation of Hebrew speech, which it regards as an accessory of political Zionism and an expression of bourgeois culture, the Soviet government encourages Jewish national and *yiddishist* cultural developments. Whole administrative districts are now Jewish in a national sense and projects for a Jewish republic, to enjoy equal status with other federated socialist Soviet republics, have been developed.

The effects of emancipation upon Jewish life have been marked throughout the world. The removal of disabilities has brought about a great economic restratification. While Jews were previously almost totally excluded from agriculture, the proportion of farmers among them rose to about 2 percent in 1900 and is almost 5 percent today. General admission to the medical, legal and teaching professions and to public offices as well as their induction into the cultural life of the surrounding nations has opened a vast range of opportunities to Jewish intellectuals. Nevertheless, the proportion of Jews in commercial occupations everywhere remains larger than their proportion in the population. The transition from craft to heavy industry has also been very slow among Jews except in the Soviet Union. As a whole, however, the preemancipation economic contrast between Jews and Gentiles is steadily disappearing.

In some countries rapprochement between Jew and Gentile resulted in a tremendous increase of intermarriage. At its highest, in Trieste in 1927 every other Jew or Jewess married a

Gentile. In Copenhagen and Hamburg the proportion is one third, in Germany as a whole one fifth, in the interior of Russia one sixth. In America, where it reached one sixth before 1880, it dropped suddenly during the "Russian immigration" of the 1880's but is again increasing. In the east European mass settlement, including White Russia and the Ukraine, however, it ranges between 1 and 5 percent. Perhaps in part because of an apparent low fecundity of such marriages, the change in the racial composition of the Jews is still comparatively small.

In the communal life of Jewry emancipation meant the abolition of the traditional form of self-government. In countries such as the United States and France the separation of state and church resulted in the substitution of freely organized congregations for the official communities in which membership was compulsory. In most European countries the community was retained, but its range of activities was limited to the religious field, a term under which was included a variety of competences. For instance, in eastern Europe and Palestine the community continues to exercise considerable control over marriages and divorces, birth registration and social work. In cultural life the transformation was the more obvious the more readily the Jews adopted the language of the surrounding population and partook of its cultural life. Even in "purely" Jewish expressions, such as Hebrew and Yiddish letters, the influx of foreign ideas and the adaptation of foreign patterns is fully evident. The early reform movement in Germany and the United States was an extreme application of emancipation to religious life, and the emancipation influenced even conservative and orthodox Jewry. The present religious crisis in Judaism is due not only to antireligious tendencies of the age but also to the impact of emancipation.

Jews are almost unanimously in favor of legal emancipation. Even Zionists, who formerly despised of Diaspora life and demanded "self-emancipation" instead of emancipation from outside, today insist upon equality of rights in the Diaspora. As to emancipation in a wider sense opinions differ. While assimilationists of all shades favor it, both Zionists and Diaspora nationalists reject it, in so far as it implies loss of Jewish national identity. For them only the combination of equality and national minority rights presents a more or less satisfactory solution. But while Diaspora nationalists regard such a development as a definite and desirable solution of

the Jewish problem, Zionists postulate a Jewish homeland to supplement it.

SALO BARON

See. EMANCIPATION, GHETTO, DIASPORA; ANTISEMITISM, RACE CONFLICT, NATIONALISM, MINORITIES, NATIONAL, SOCIAL DISCRIMINATION, INTOLERANCE.

Consult. Dubnow, S. M., *Weltgeschichte des jüdischen Volkes*, tr. from Russian mss. by A. Steinberg, 10 vols. (Berlin 1928-30, vols. I and VIII 3rd ed.) vols. VIII-X; Philippson, Martin, *Neueste Geschichte des jüdischen Volkes*, 3 vols. (Leipzig 1910-22, vol. I 2nd ed. Frankfurt 1922), Jost, I. M., "Neuere Geschichte der Israeliten von 1815 bis 1845" in *his Geschichte der Israeliten seit der Zeit der Maccabäer bis auf unsere Tage*, 10 vols. (Berlin 1820-47) vol. x, pt. I, Ruppin, Arthur, *Soziologie der Juden*, 2 vols. (Berlin 1930-31), Cohen, Israel, *Jewish Life in Modern Times* (2nd ed. London 1929), Baron, Salo, "Ghetto and Emancipation" in *Menorah Journal*, vol. XIV (1928) 515-26, Hagani, Baruch, *L'émancipation des juifs* (Paris 1931); Sacher, H., *Jewish Emancipation, the Contract Myth* (London 1917), Brandt, Hans, *Der Staat und die Juden* (Königsberg 1928); Henriques, H. S. Q., *The Jews and the English Law* (Oxford 1908), Wurmik, Peter, *History of the Jews in America* (2nd ed. New York 1931); Lucien-Brun, H., *La condition des juifs en France depuis 1789* (Lyons 1900), Anchel, R., *Napoléon et les juifs* (Paris 1928), Seeligmann, Sigmund, *Die emancipation der joden in Niederland* (Amsterdam 1913), Pribian, A. F., *Urkunden und Akten zur Geschichte der Juden in Wien*, 2 vols. (Vienna 1918), Freund, I., *Die Emancipation der Juden in Preussen*, 2 vols. (Berlin 1912); Eckstein, Adolf, *Der Kampf der Juden um ihre Emancipation in Bayern* (Furth 1905), Rissler, Gabriel, *Gesammelte Schriften*, ed. by M. Isler, 4 vols. (Frankfurt 1867-68), Zuckermann, M., *Die Vorarbeiten der hannoverschen Regierung zur Emancipation der Juden* (Hannover 1900), Kruk, Joseph, *Die Rolle der auswärtigen Staaten für die Emancipation der Juden in der Schweiz* (Zurich 1913), Victor, Willi, *Die Emancipation der Juden in Schleswig-Holstein* (Hamburg 1914), Friedmann, F., *Die galizischen Juden im Kampfe um ihre Gleichberechtigung* (Frankfurt 1929), Dubnow, S. M., *History of the Jews in Russia and Poland*, tr. from Russian mss. by I. Friedlaender, 3 vols. (Philadelphia 1916-20), Heller, Otto, *Der Untergang des Judentums* (Vienna 1931); Kohler, Max J., and Wolf, Simon, *Jewish Disabilities in the Balkan States* (New York 1916); Cohen, E., *La question juive devant le droit international public* (Paris 1922), Baron, Salo, *Die Judenfrage auf dem Wiener Kongress* (Vienna 1920), Kohler, Max J., "Jewish Rights at the Congresses of Vienna (1814-1815) and Aix-la-Chapelle (1818)" in *American Jewish Historical Society, Publications*, vol. XXVI (1918) 33-125, Wolf, Lucien, *Notes on the Diplomatic History of the Jewish Question* (London 1919); Jacob, B., *Die Wissenschaft des Judentums, ihr Einfluss auf die Emancipation der Juden* (Berlin 1907).

JEX-BLAKE, SOPHIA (1840-1912), British feminist and physician. After struggling to obtain an education Sophia Jex-Blake determined to found a college for women and for this purpose traveled in Germany and America. From

Dr. L. Sewall of Boston she received her first insight into the pressing need for women doctors, and although she had earlier rejected the suggestion of a medical career she made an unsuccessful attempt to enter Harvard Medical School. She next sought entrance to the University of Edinburgh and with ready speech and a biting pen surmounted the difficulties of examining boards and hospital committees and won a legal decision against the university in 1869 permitting her to study medicine there—only to be repulsed when the university obtained on appeal a judgment pronouncing the concession illegal. Ignoring the advice of those who urged that the time was not opportune in Britain she engaged in spectacular agitation to gain the right for women to study medicine. In 1874 she founded the London School of Medicine for Women, in 1876 succeeded in getting an act passed enabling universities to admit women medical students and in 1877 took her own degree at Berne. Her fighting qualities and singleness of purpose won popularity for the woman's education movement, but her uncompromising spirit alienated many from her and prevented her from winning fame as a doctor. Through her efforts the School of Medicine for Women and the Dispensary for Women and Children were established in Edinburgh.

GRACE FORD

*Works:* *A Visit to Some American Schools and Colleges* (London 1867); *Medical Women* (Edinburgh 1872, 2nd ed. 1886).

*Consult:* Todd, M., *The Life of Sophia Jex-Blake* (London 1918).

JHERING, RUDOLF VON (1818–92), German jurist. Jhering was successively professor at the universities of Basel, Rostock, Kiel, Giessen, Vienna and Göttingen. He began his career as a Romanist but developed into the most encyclopaedic mind in German law in the nineteenth century. His self-willed character and volatile temperament prevented his founding a dogmatic school, but possibly for that very reason he exercised a continuous influence upon the generation which followed him.

Jhering is of importance not only to jurisprudence but to sociology. While during his lifetime almost all other jurists remained within the narrow, formal bounds of their science, he was animated by the problem of the meaning of law for life. He did not, to be sure, begin in this way: in the first half of his career he too believed that the law was a self-contained system; it was only

necessary to know the logically constructed legal concepts to be able to solve any new problem of law by a process of dialectic. About the age of forty, however, he began to destroy that which he had hitherto regarded as sacred and sought to remove law from its position of isolation and to place it in the midst of the current of life.

The individual is the starting point of Jhering's philosophy. In his most celebrated work, *Der Kampf ums Recht* (Regensburg 1872, 19th ed. Vienna 1923; tr. by J. J. Lalor, 5th ed. Chicago 1915), which has been translated into twenty languages, he taught that an attack upon an individual's legal rights was at the same time an insult to his personality and that he was consequently under a moral duty to repel the attack. But even here the striving for the idea of community is already apparent: the assertion of the law is a duty that the individual owes to society. Jhering proceeded in the same manner in his most important work, *Der Zweck im Recht* (2 vols., Leipzig 1877–83; 4th ed. 1905; vol. i tr. by I. Husik, Boston 1913). Egoism is the unavoidable point of departure for all law, but it is not unreconcilable with the needs of the world, which enlists the individual in its service by giving him the reward that he desires. As long as the world attracts him to its purposes it can be sure of his cooperation. The enlistment of the service of the individual was the very basis of culture. At another time Jhering expressed the same ideas in his declaration that the three pillars of the law were the propositions "I exist for myself," "The world exists for me" and "I exist for the world." From the first he derived the whole law of persons; from the second the law of property, family law and the law of obligations; and from the third the concept of duty. He even projected the ideas, although only incidentally, into international law upon the analogy that the individual nations existed for the purposes of the world. To Jhering the state stood, so to speak, in a subordinate position; it was society that was the supreme concept. The state interfered by means of law only to protect the order which was determined by the purposes of society. Purpose was the creator of law. Moreover the law was not the only determining force: Jhering was interested particularly in such ethical factors of social intercourse as decorum and politeness. It is thus seen how strong was the sociological trend in his thinking.

Entirely new, considering the position of the jurists of his time, was Jhering's treatment of property. He does not deny—indeed he defends

—the right of private property. But unlike most of the contemporary jurists, who steeped in the Roman law attributed absolute powers of disposal to the owner, he insisted that it must be subordinated to social needs. Attacking the problem of possession in his *Beiträge zur Lehre vom Besitz* (Jena 1868; 2nd ed. 1869, with title *Über den Grund des Besitzschutzes*) and over twenty years later in his *Der Besitzwille, zugleich eine Kritik der herrschenden juristischen Methode* (Jena 1889) he reacted against the conceptualism of the prevailing "will theory" and pointed to the social factors which had historically determined the protection of possession.

In addition to these works must be mentioned Jhering's celebrated *Der Geist des römischen Rechts auf den verschiedenen Stufen seiner Entwicklung* (3 vols., Leipsic 1852-65; 5th-6th eds. 1906-07), the significance of which he himself expressed in the motto, "Through the Roman law but beyond it." Jhering's strong sense of humor, which achieved satiric heights, is reflected best in his spirited *Scherz und Ernst in der Jurisprudenz* (Leipsic 1885, 10th ed. 1909). In 1857 he founded with Gerber the *Jahrbuch für die Dogmatik des bürgerlichen Rechts*, which is still held in high regard. Almost all of Jhering's works have had influence beyond Germany, and the contemporary world may still find in him a source of inspiration.

J. WILHELM HEDEMANN

*Consult:* Dahn, Felix, *Die Vernunft im Recht* (Berlin 1879); Kuntze, J. E., *Jhering, Windscheid, Brinz* (Leipsic 1893), and *Zur Besatzlehre, für und wider Rudolph von Jhering* (Leipsic 1890); Poschinger, H. von, *Bismarck und Jhering* (Berlin 1908); Stintzing, R. von, and Landsberg, E., *Geschichte der deutschen Rechtswissenschaft*, 3 vols. (Munich 1880-1910) vol. III, pt. II, p. 788-825; Hurwicz, Elias, *Rudolf von Jhering und die deutsche Rechtswissenschaft*, Abhandlungen des kriminalistischen Seminars an der Universität Berlin, n.s., vol. VI, pt. IV (Berlin 1911); Rumel, Max, *Rudolph von Jhering* (Tubingen 1922); Lange, Harry, *Die Wandlungen Jherings in seiner Auffassung vom Recht* (Berlin 1927); Smith, Munroe, "Four German Jurists" in his *A General View of European Legal History* (New York 1927) p. 110-255; Macdonell, John, in *Great Jurists of the World*, ed. by John Macdonell and Edward Manson, Continental Legal History series, vol. II (Boston 1914) p. 590-99. See also the introductions and appendices to Husik's translation of *Der Zweck im Recht*, p. xv-lix and 425-78.

JIHAD, the battle on the path of Allah, approximates the western concept of holy war. Its history goes back to the early days of Islam when the religious obligation to disseminate the faith—either by persuasion or, failing that, by the

sword—explains in large part the tremendous momentum of early Islam and the unprecedented, triumphant growth of Mohammed's religion only a few decades after its founder's death.

Mohammed himself did not propound the obligation on such a scale. There is no mention of the jihad in the oldest portions of the Koran: the suras of the Meccan period preached patience in the face of attack because at that time no other attitude was possible. It was only in Medina, after Mohammed had become the leader of an entire community, that he commanded his adherents to return blow for blow and even to begin war independently. The Koran in speaking of the jihad against unbelievers often calls the latter unfaithful and dangerous, and Mohammed appears to have been less interested in their conversion than in their subjugation. They were to be fought not so much because of their unbelief as on the ground that they were hostile to his adherents. Thus the Koran (II: 186) states: "And fight for the cause of God against those who fight against you; but commit not the injustice of attacking them first: verily God loveth not the unjust."

Shortly after the death of the prophet, however, the war against unbelievers as such developed into a religious duty; numerous passages in the Koran were cited in which Allah using Mohammed as a mouthpiece commanded a struggle against the unbelieving Arabs. The jihad became accordingly almost a sixth "commandment" (*ruk'n*) and was in fact subsequently accepted as such by the descendants of the so-called Kharijites. Such a development was to be expected in a militant religion which arose among a warlike nomad people. It also became a political necessity, for after Mohammed's death a number of tribes weakened in their allegiance to the theocracy and external expansion seemed the best way of remedying the situation. The holy war with its promise of spoil made Islam understandable to the Bedouins and won back their loyalty and support, and the religious impetus in turn gave strength to the wars of conquest.

The jihad was to be supervised or led by a Moslem sovereign, or imam, and the entire world considered to be divided into the *dār al-ḥarb*, the war area where Moslems were not in control, and the *dār al-islām*, or the regions already under Islamic rule. Theoretically the Moslem state was at permanent war with the non-Moslem world. Hence it was the purpose of

the jihad to transform the *dār al-harb* into the *dār al-islām*. The implications of this concept were of course never completely realized and Moslem theologians were compelled very early to adapt the doctrine to changing needs. A people against whom a holy war was to be waged were first summoned to embrace Islam. In case of refusal they had the choice of submitting or fighting. In the first case they were granted mercy with certain limitations, whereas in the second they might expect the loss of their freedom as well as of their property. From the very beginnings of Islam large numbers of people of other faiths inhabited the Islamite areas and special provision was made for believers in religions based upon revealed scriptures, especially Jews and Christians, to allow them to enter into a protected relationship with the Islamic empire. Upon the payment of certain taxes they were guaranteed the free exercise of their religion as well as the safety of their lives and property. In fact their lives and property had to be defended to the end against enemies.

Gradually the whole doctrine of the jihad was modified, and at present it is interpreted as a joint and not an individual duty of all free, male, adult Moslems sound in mind and body who have the means to reach a Moslem army; this duty will continue to exist until the entire world has been subjected to Islam. It is held, however, that the obligation is fulfilled when a certain number of the faithful comply with it, and that the religious law is satisfied if a Moslem sovereign undertakes one campaign annually or even if he makes preparations for war and sees to the preparedness of the army. The imam alone is empowered to direct the jihad; and in cases such as that of the Shiites, whose imam is at present considered invisible, there can be no jihad until the imam reappears. If a Moslem country is invaded by unbelievers, the imam may issue a general call to arms to all the Moslems in the country and in case of need this summons may be extended to embrace the entire Moslem world. As territories once Moslem have come under the control of non-Moslems, however, the position has been taken that they do not become *dār al-harb* except under certain conditions, the most important of which is the non-observance of legal decisions of Islam. When these conditions are violated the country must be won back or Moslems must emigrate from it.

These doctrines reflect those changes in the political and economic background of Islam which have not only influenced theory but have

also profoundly affected the jihad as a realistic force. While the duty of war conformed to tribal custom, the jihad remained a source of strength to Islam. The promises of rich rewards for those who die battling for the faith, depicted in the Koran and more vividly in the traditions (Hadith), naturally increased tremendously the courage and the contempt of death on the part of Moslem warriors. The belief in the martyrs' bliss has raised the courage of Moslem soldiers to an often unbelievable degree even down to recent times. Nevertheless, the significance of the jihad diminished consistently as Islam was accepted by large settled populations and as the Arabs themselves ceased to be a segregated military group. The doctrine of the holy war was based moreover upon the assumption of a unified Moslem religious-political state, an assumption which soon proved false. Various religious groups arose under rival imams, and even at the time of the Abbassides the empire was a very shaky structure which rapidly dissolved into a large number of rather independent governorships and sultanates. The Ottoman Empire, which united under its scepter most of the former Abbassid provinces as well as large new areas reaching as far as the gates of Vienna, was difficult to control and disintegrated rapidly during the nineteenth and the early twentieth century. The sense of unity, very strong in the past, was never able to take the place of an organized ecclesiastical union, which was thwarted by political circumstances as well as by the cultural level of the Moslem peoples.

The collapse of the jihad as a significant force was made clear in 1914 when the Ottoman sultan in his capacity of caliph summoned the whole Moslem world to a holy war against the Entente powers. The fact that Turkey was acting in alliance with infidel countries gave the command an unorthodox flavor and the only Moslem rulers to respond were the great Sanūsī and the imam of San'a. The enemy side endeavored scientifically to disprove the dubious claims of the caliphate; in fact the Moslems in countries controlled by the Entente could not have joined the Ottoman armies if they had wanted to. The pan-Islamic propaganda of the pre-war years bore little fruit, and it was probably the growing strength of nationalism among Moslem peoples which as much as any other factor played havoc with the Turks' appeal for Islamic unity and made possible the anomaly of Indians and Arabs fighting with Christian powers against their Turkish brethren in the hope of furthering their

own national interests. The summons to a jihad remained confined to Turkey; elsewhere there were only a few resolute and devout Moslems who were not deterred from rushing to arms.

Since the World War the jihad has had even less practical importance, especially since the abolition of the caliphate and the disintegration of the Ottoman Empire. Certain movements within Islam, such as Wahhabism in southern Arabia, still retain the jihad in their program, but modern theologians tend in general to diminish or discredit it. As a practical matter under present political conditions in the Orient a holy war for the further spread of Islam is entirely out of the question. Just as attacks were repeatedly made upon Turkey during previous centuries without being immediately denounced as attacks upon the caliphate and without all the Moslems being summoned to the defense, an aggression against a Moslem country in the near future will scarcely cause the unified Moslem community to rise against the invader.

FRANZ BAHNGER

See: ISLAM; PAN-ISLAMISM; CALIPHATE, ISLAMIC LAW.

Consult: Arnold, T. W., *Preaching of Islam* (2nd ed London 1913) app. 1, Carra de Vaux, B., *La doctrine de l'Islam* (Paris 1909) ch. vi, Pizzi, I., "L'Islamismo e la guerra santa" in *Nuova antologia*, vol. LXIX (1897) 5-35, Obbink, H. T., *De heilige oorlog volgens den Koran* (Leyden 1901), Rescher, O., *Beiträge zur Dschihād-Literatur*, 3 vols. (Stuttgart 1920-21), Huat, C., *Histoire des arabes*, 2 vols. (Paris 1912-13) vol. 1, p. 202-08, Snouck Hurgronje, C., *Politique musulmane de la Hollande* (Paris 1911) p. 16-20.

FOR THE WORLD WAR AS A JIHAD: Toynebee, A. J., "The Islamic World since the Peace Settlement" in *Survey of International Affairs* 1925, vol. 1 (Oxford 1927) p. 43-44, Al-Tūmīsī, Sālih al-Sharīf, *Die Wahrheit über den Glaubenskrieg*, tr. by K. E. Schabinger from Arabic ms. (Berlin 1915), Huat, C., "Le khilāfat et la guerre sainte" in *Revue de l'histoire des religions*, vol. LXXI (1915) 288-302; Gottheil, R., *The Holy War* (New York 1915), Snouck Hurgronje, C., "Heilige oorlog Made in Germany" in *Gids* (1915) pt. 1, p. 115-47, tr. by J. E. Gillet as *The Holy War in Germany* (London 1915), and "Deutschland und der heilige Krieg" in *Internationale Monatsschrift für Wissenschaft, Kunst und Technik*, vol. IX (1914-15) 1025-33, Becker, C. II., "Deutschland und der heilige Krieg" in *Internationale Monatsschrift für Wissenschaft . . .*, vol. IX (1914-15) 631-62, 1034-42. Further references are given in Pfannmüller, D. G., *Handbuch der Islam-Literatur* (Berlin 1923) p. 248-49, 253-55.

JĪMŪTAVĀHANA, Hindu jurist. He was the founder of the Bengal, or Gauriya, school of law, which flourished probably from about 1090 to 1130. The acceptance of these dates, which are based on astrological minutiae in his works and on traditions of his descent and of his position

as chief justice and minister of one of the Sena kings of Bengal, leads to the assumption that Jīmūtavāhana's legal eminence was only tardily recognized. Although he quotes no writer later than the twelfth century, he himself is not quoted until the fifteenth century; the earliest of his known manuscripts dates from the close of this century, and in fact Jolly and others assign him to this later period.

Three works of Jīmūtavāhana are extant: the *Kāla-vivēka* (ed. by P. Tarkabhūšana, Bibliotheca Indica, n.s., vol. LXIX, Calcutta 1905), on the determination of the calendar and auspicious times and seasons; the *Yayavahara Mātrikā* (ed. by A. Mookerjee in Asiatic Society of Bengal, *Memoirs*, vol. III, 1912, p. 277-353), on judicial procedure; and the *Dāya-Bhāga* (tr. by H. T. Colebrooke in *Two Treatises on the Hindu Law of Inheritance*, Calcutta 1810, p. 1-240), literally "division of inheritance." Although Jīmūtavāhana nowhere expressly names the *Mitākshara* of Vijnānesvara (tr. in Colebrooke's *Two Treatises . . .*), an omission comprehensible in a contemporary but inexplicable in a fifteenth century writer, he unquestionably wrote the *Dāya-Bhāga* to combat certain doctrines of which that jurist was the protagonist. He negates the distinction between ancestral and self-acquired property; between unobstructed inheritance, the right to which accrues at birth, and obstructed inheritance, the right to which accrues only after the death of the property holder. He denies the doctrine of birth rights and replaces the Hindu paterfamilias on the pedestal which he occupied earlier in the *Manusmṛiti* as the unrestricted lord of the family property. The sons cannot demand a partition against his wishes; he may sell them into slavery and has rights over their personal earnings; he may spend or divide the property in his lifetime, even *mortis causa*, although not, strictly speaking, by will. It follows that father and sons do not in law constitute a joint family. In the same uncompromising individualism the members of the joint family are regarded not as joint tenants but as tenants in common. Their shares are freely assignable, and a childless widow succeeds to a share as the heir of her husband. On the other hand, if her husband dies before acquiring his right, she is not legally entitled even to maintenance. Jīmūtavāhana's touchstone for the right to inherit is the duty to offer oblations to departed ancestors. In outline his scheme differs little from that of the *Mitākshara* for obstructed inheritance; but his theory

enables him to prefer the father to the mother and the daughter who has or is still capable of male offspring to one who is not. The duty of oblations to maternal ancestors serves as a peg to introduce a select list of cognates for a higher place in the scheme of inheritance than *Vijñāṇesvara* allows. Finally, *Jimūtavāhana* says "An accomplished fact outweighs a hundred texts," which, however, means no more than *factum valet quod fieri non debuit*: the exercise of a legal right is not barred because in a particular case it happens to be the breach of a moral duty. Some Bengali scholars have argued against the prevailing acceptance of this text and have endeavored to show that the *Dāya-Bhāga* differs less from the *Mitākshara* than is commonly supposed. These views, however, have not carried general conviction even in Bengal, although it is unquestionable that the sentiment of the *Dāya-Bhāga* joint family is nearer to the *Mitākshara* than the bare letter of the law. The system of law which *Jimūtavāhana* propounded is still followed by Bengalis and is administered for them by the British courts.

SEYMOUR VESEY-FITZGERALD

*Consult:* Kane, P. V., *History of Dharmasastra*, Bhandarkar Oriental Research Institute, Government Oriental Series, Class B, no. 6, vol. 1.—(Poona 1930— ) p. 318–27; Sarkar, G. C., *Sāstri, Hindu Law* (Calcutta 1906); Ghose, J. C., *Principles of Hindu Law* (2nd ed. Calcutta 1906); Chakravarti Bahadur, R. M., "Contributions to the History of Smṛti in Bengal and Mithilā" in Asiatic Society of Bengal, *Journal and Proceedings*, n.s., vol. xi (1915) 311–406, especially 313–27.

JINGOISM. *See* CHAUVINISM.

JIREČEK, JOSEF KONSTANTIN (1854–1918), Austro-Czech historian. Jireček was born in Vienna of a family of celebrated Czechish scholars. He studied at the University of Prague and lectured there as *Privatdozent* from 1877 to 1879. His historical interests centered almost exclusively about the Balkan peoples in the Middle Ages; at first he devoted his attention to the Bulgars and Serbs, then for a time only to the Bulgars and later in an increasing degree to the southwestern part of the Balkan Peninsula—the Serbs, Balkan Romans and Albanians—and Byzantium. Political, social, economic and cultural history as well as historical geography and ethnography were included in the scope of his researches. His first major work, *Die Geschichte der Bulgaren* (Prague 1876), written at the age of twenty-one and at a time when the Bulgarian question was to the fore, secured him a world

wide reputation and special recognition in Bulgaria. In 1879 the Bulgarian government invited him to Sofia. In the course of his five years' activity as secretary general of the Ministry of Education, as minister of education and as director of the National Library he won lasting renown in the organization and extension of the entire Bulgarian educational system. His work was especially significant in regard to the primary and intermediate schools and cultural institutions (the university, the National Library, the National Museum and the Bureau of Statistics). His fame rested also upon his valuable advice in the formation of the modern machinery of governmental administration. The profound first hand knowledge of the Balkan Peninsula which he acquired through his influential position and extensive travels led him to write *Das Fürstenthum Bulgarien* (Prague 1891), which is still essential for a study of Bulgaria. In the succeeding decades he was active in Prague and Vienna, became increasingly interested in Ragusan, Serbian and Byzantine history and after exhaustive research in the rich Dalmatian archives treated the most complicated problems of Balkan, Roman and Albanian history. He not only collected an enormous mass of entirely new historical facts but also laid the foundations of present day knowledge of the ancient history of the Balkan Peninsula. After his great work on the Romans in the cities of Dalmatia, which is of basic importance for late Roman, Byzantine and mediaeval western history, ethnography, topography and linguistics, he composed his masterpiece, the *Geschichte der Serben* (Allgemeine Staatengeschichte, pt. i, no. 38, 2 vols., Gotha 1911–18), which carries the narrative to 1537 and is still the best work on the subject; it complements his "Staat und Gesellschaft im mittelalterlichen Serbien" (Kaiserliche Akademie der Wissenschaften, Vienna, Philosophisch-historische Klasse, *Denkschriften*, vol. lvi, 1912, nos. 2–3, vol. lviii, 1914, pt. ii, and vol. lxiv, 1919, pt. ii), which extends to 1459 and is equally fundamental for the older cultural history of the Balkans and southern Slavs, especially of the southwest.

Jireček was the most important representative among the Slavs of the German critical method in historical science and is recognized as the leading authority on the past of the Balkan Peninsula, its historical geography and ethnography. The originality and importance of his contribution to Balkan historiography proceed from his critical examination of sources, espe-

cially archives; his break with the constructions and hypotheses based on the former combination of history and philology; and the extended scope of his researches and observations whereby he secured a mass of separate pieces of information and was able to correct former concepts concerning the most difficult problems; but especially from the fact that he supported political data by legal, socio-economic and historico-ethnographic data and that in his works on cultural history he emphasized as fundamental socio-economic and legal relations. He thus succeeded in demonstrating to what extent western influences prevailed along with the Byzantine in the governmental as well as the social and economic structure of the Balkans.

JOSEF MATL

*Consult:* Murko, M., in *Neue österreichische Biographie*, vol. i (1918-19) 537-97; Zlatarski, V. N., in *Bulgarska Akademiya na Naukite, Ietopis*, vol. iv (1919) 85-110; Radojčić, N., in *Narodna starina*, vol. vi (1923) 193-216.

JITTA, DANIEL JOSEPHUS (1854-1925), Dutch jurist. Jitta was educated in Holland and Belgium; after a period of law practise he became professor of commercial and private international law at the University of Amsterdam. Subsequently he served as a counselor of state at The Hague.

His writings, which are characterized by a cosmopolitan, somewhat idealistic spirit and by a philosophy of tolerance and reconciliation, are significant contributions to the theory of private international law. The most important are: *The Method of Private International Law* (The Hague 1890); *The Substance of Obligations in Private International Law* (2 vols., The Hague 1906-07); *The Renovation of International Law, on the Basis of a Juridical Community of Mankind* (The Hague 1919). Jitta regarded mankind not only as a de facto community but also as a de jure community which should be governed by principles based upon the requirements of the universal social group. These principles are the fundamentals of international law and aim at establishing a universal reign of law. They must be respected by the states, which derive their sovereignty from mankind itself and are obligated to insure order not only for their own national local groups but also for all society. Private international law should not be called the "conflict of laws" but rather "private law considered from the point of view of what the juridical community of mankind demands,"

since the solution of conflicts is not its aim but only an expedient. In the sphere of private law he distinguishes between the relations which are relatively international and those which are absolutely international. The first are relations of foreign origin, existing between foreigners, in which the foreign law applies; except where it conflicts with the public policy, order and morals of the state in which the case is being adjudicated. The absolutely international relations are those which do not belong preponderantly to the juridical life of any single state but which affect more than one. Here the rules of the common international law are applicable. Frequently they can be formulated by resolving the conflict of laws and adopting the law of one of the competing states. Sometimes, however, this method is not satisfactory and then a fully independent, newly formulated rule should be adopted. In settling questions of private international law the rule suitable to the universal society of mankind applies by virtue of reason, except when the positive law of the state in which it is adjudicated is opposed to it; for the judge is bound by the positive law of his own state.

J. KOSTERS

*Consult:* Baty, T., "A Modern *Jus Gentium*" in *Juridical Review*, vol. xx (1908-09) 109-20; Caleb, Marcel, *Essai sur le principe de l'autonomie de la volonté en droit international privé* (Paris 1927) p. 376-79; Beale, J. H., *A Treatise on the Conflict of Laws*, vol. i- (Cambridge, Mass. 1916-) p. 95-98.

JOACHIM OF FLORA (c. 1131-c. 1202), Calabrian mystic and prophet. Legends have sprung up luxuriantly about the name of Joachim of Flora, but nothing is certain concerning his life except that he was born at Celico of humble parentage, that while still very young he entered the Cistercian order shortly after the reconciliation of Roger II of Sicily and St. Bernard and that he later abandoned it to found a monastic congregation more faithful to the rigorous Benedictine rule. Although a renegade from the Cistercians Joachim represented and expressed better than any other figure the democratic and cooperative ideas of organization which the Cistercian movement was propagating throughout Europe in opposition to feudalism. In Joachim's interpretation of the Bible may be found a repercussion of these ideas. Joachim divides revelation into three stages, each corresponding to a historical epoch: the Age of the Father, or of the Old Testament; the Age of the Son, or of the New Testament; and the Age of the Holy Ghost, or of the future. The first was



the time of spouses—that is, patriarchs and kings—and of slaves; the second of freemen and priests; the third and final era would be that of friends and mystics, living without class or social distinctions. The visible church of Rome, to which Joachim ascribed a merely symbolical and provisional function, would according to his reckoning have fulfilled its function in 1260. In that year it would collapse, making way for the new epoch of equality and peace, which would be ushered in by a purified monachism. Thus at a time when the revival of trade was everywhere sharpening the acquisitive sense Joachim resurrected the message of primitive Christianity. In 1254, following the attempt of a fervent disciple to give the Joachite faith a canonical form with the fatidical title of *Evangelium aeternum*, Rome condemned Joachism. But the faith, which had reverberated throughout Italy and southern France, survived the condemnation. The Spirituals of the Franciscan order were led by the striking similarity between the Franciscan religion and the Joachite Age of the Holy Ghost to proclaim Francis as the inaugurator of the third era. Joachism became the creed of the Spirituals and of the Fraticelli; and it was a logical consequence of their Joachite faith that these groups became fervent advocates of poverty and communism. Through them it continued to be a vital element in the spiritual atmosphere of Italy and southern France until, after experiencing an illusory realization under the brief pontificate of Celestine V (1294), Joachism and with it mediaeval ecclesiastical communism were finally overwhelmed by the persecutions under Boniface VIII (1294–1303) and John XXII (1316–34).

ERNESTO BUONAIUTI

*Works:* *Divini vatis abbatis Joachim liber concordia Novi ac Veteris Testamenti* (Venice 1519); *Expositio magni prophete abbatis Joachim in Apocalypsum* (Venice 1527); *Psalterium decem cordarum (abbatis Joachim)* (Venice 1527); *Tractatus super Quatuor Evangelia*, ed. by Ernesto Buoniauti, Istituto Storico Italiano, Fonti per la Storia d'Italia, vol. lxvii (Rome 1930).

*Consult:* Buoniauti, E., *Gioacchino da Fiore*, Collezione di Studi Meriodinale, vol. xiv (Rome 1931); Grundmann, H., *Studien über Joachim von Floris*, Beiträge zur Kulturgeschichte des Mittelalters und der Renaissance, vol. xxxii (Leipzig 1927); Bondatti, G., *Gioachinismo e francescanesimo nel Dugento* (S. Maria degli Angeli 1924); Benz, Ernst, "Joachim-Studien I. Die Kategorien der religiösen Geschichtsdeutung Joachims" in *Zeitschrift für Kirchengeschichte*, 3rd ser., vol. 1 (1931) 24–111; Gebhart, N.-E., *L'Italie mystique* (7th ed. Paris 1911), tr. by E. M. Hulme as *Mystics and Heretics in Italy* (London 1922) ch. ii.

JOHANN MORITZ, FÜRST VON NASSAU-SIEGEN (1604–79), German colonial administrator. Johann Moritz was born in Dillenburg and after an excellent Calvinistic education in Germany and Switzerland achieved distinction in the Dutch army. In 1636 he was made governor of "New Holland," the Dutch West India Company's foothold in northern Brazil. The company, organized primarily as a military weapon to weaken Spain by threatening and appropriating its bullion supply, had chosen the more vulnerable Portuguese part of the Spanish empire in America as the main object of its attack. It had acquired New Holland after a hard struggle, but the colony was grossly neglected until the failure of the company's freebooting enterprise to cover expenses led the directors to seek an added source of revenue in sugar production. For the task of transforming New Holland into a colony with a developed social and economic life Johann Moritz was eminently qualified by his statesmanlike vision and his military talents. He pushed back the Portuguese and greatly increased the area of the colony. He placed all responsible posts in reliable hands, furthered Protestant missions, organized the care of the poor, built schools and brought scholars and artists to the capital, Mauritsstad. The Portuguese planters who had fed were guaranteed free exercise of their religion and assured of the return of their property. For a time, however, many were afraid to return; the government sold the unclaimed sugar mills and plantations at auction on long term credits and by conquests in Africa provided an adequate supply of slave labor on similar terms. On the governor's advice the company's all inclusive trade monopoly granted in 1621 was restricted in 1638 to the importation of slaves and ammunition and the export of brazilwood. All these favorable conditions brought many settlers, among whom Portuguese Jews predominated. The governor attempted to maintain friendly relations among the Dutch, Portuguese and natives; but the unwise agitation of Calvinist zealots, the encroachments of soldiers and the company's officials on the population and above all the growing indebtedness of the planters gave rise to increasing dissatisfaction. The danger of the situation was aggravated when the directors, burdened with a badly paying colony, ordered a diminution of the defense forces and an increase of the sugar export. Finally they suspected Johann Moritz of seeking to create a principality for himself, and he resigned in 1644. When Portu-

guese revolts culminated in the loss of Brazil in 1654, the miserable planning and support of the company's Brazilian enterprise were fully revealed.

HERMANN WATJEN

*Consult:* Baerle, Casper van, *C. Barlaei rerum per octennium in Brasilia . . .* (2nd ed. Clèves 1660), tr. into German as *Brasilianische Geschichte . . .* (Clèves 1659); Driesen, L., *Leben des Fürsten Johann Moritz von Nassau-Stegen* (Berlin 1849), Fabius, A. N. J., *Johan Maurits de braziliaan (1604-70)* (Utrecht 1915); Kruse, H., *Johann Moritz von Nassau Stegen*, Westfälische Lebensbilder, vol. 1 (Münster 1939) p. 68-86; Wätjen, H., *Das holländische Kolonialreich in Brasilien* (The Hague 1921).

JOHN DUNS SCOTUS. *See* DUNS SCOTUS, JOHN.

JOHN QUIDORT OF PARIS (d. 1306), mediaeval theologian and political theorist. John was a Dominican in St. Jacob in Paris and late in life he became a licentiate at the University of Paris. He is the author of a commentary on the *Sentences* of Peter Lombard and of other theological works which mark him as a penetrating and independent thinker. His chief political work is his *Tractatus de potestate regia et papali* written in 1302 or 1303 during the controversy between Pope Boniface VIII and Philip the Fair of France. John, although not extreme in his claims, took the side of the king and particularly attacked the views of such defenders of the pope as Aegidius Romanus, James of Viterbo and Henry of Cremona. Seeking a middle position between the extreme adherents of the doctrines of temporal and spiritual supremacy, he held that church and state are each independent within their respective spheres although there is a reciprocal influence between them. While allowing for the material basis of the church John maintained that its authority should be limited to spiritual matters. A sharp analysis of the essence of spiritual power, he declared, reveals that it does not involve the use of secular authority or of force but is confined solely to the exercise of moral influence. The church, it is true, may possess temporal sovereignty and jurisdiction but only when so endowed by the state. It can punish offenses against the church only indirectly by persuading the temporal power to take action against the offenders. John recognized the divine basis of the papal authority but asserted that the spiritual powers of the bishops and priests are likewise derived directly from God. The pope is not the absolute ruler, but only the responsible

leader of the universal church which is made up of a series of communities and churches. Possession of church property is always vested in these communities and churches and not in the hands of an individual, even though he be pope. John favored a representative and constitutional organization of the church with the college of cardinals, the emperor and the general council possessing the power to limit the rule of the pope and if necessary to depose him. 'The general council, not the pope, is the supreme authority in matters of faith. Germs of the conciliar theory are undoubtedly present in John's theories; Gerson and others were influenced by him and Bellarmine cites him as the representative of the most moderate theory concerning church and state relations.

In his political philosophy John is a follower of Aristotle and Thomas Aquinas but he emphasizes the social contract and restricts the ethical ends of the state to the moral and not the theological spheres. The ideal form of political organization is the national state with a representative form of government. He attacked the idea of a universal empire and declared the Roman Empire to be extinct.

RICHARD SCHOLZ

*Consult:* Scholz, Richard, *Die Publizistik zur Zeit Philipps des Schönen und Bonifaz VIII* (Stuttgart 1903) p. 275-333, Rivière, Jean, *Le problème de l'église et de l'état au temps de Philippe le Bel*, *Spicilegium Sacrum Lovaniense, Études et Documents*, vol. 8 (Louvain 1926) p. 281-300, Grabmann, Martin, "Studien zu Johannes Quidort von Paris" in *Bayerische Akademie der Wissenschaften, Philosophisch-philologische und historische Klasse, Sitzungsberichte*, 1922, no. 3 (Munich 1922), Carlyle, R. W. and A. J., *A History of Mediaeval Political Theory in the West*, 5 vols. (Edinburgh 1903-28) vol. v, p. 422-37; Lajard, Félix, in *Histoire littéraire de la France*, vol. xxv (Paris 1869) p. 244-70.

JOHN OF SALISBURY (c. 1120-80), English churchman and scholar. John, author of the first treatise of strongly sacerdotal tendency written in England, was, in Stubbs's words, "the most learned man of his day." Trained at Paris, where he attended the lectures of Abélard, and at Chartres, John divided his official career during the period from 1148 to 1159 between the papal court and the service of Archbishop Theobald of Canterbury. In 1159 he remarked that he had crossed the Alps ten times since he first left England. That year he fell under the displeasure of Henry II and was deprived of some of his official duties, an event which gave him time to complete his two main works, the *Polycraticus* and

the *Metalogicus*. The latter describes his student years and early philosophical pursuits; the former, headed also *De nugis curialium, et vestigiis philosophorum*, enunciates two political doctrines—the distinction of the legitimate prince from the tyrant and the subordination of the imperial to the priestly authority. The prince is not absolved from obedience to law; his position is that of “a minister of the public welfare and a servant of equity,” since the state exists to promote equity. From the church the prince receives the whole authority he wields. The fifth and sixth books are based upon a work called by John *Institutio Traiani*, from which he draws a lengthy comparison of the state with the human body: the head is the prince, the soul the priesthood. But if John was a sacerdotalist he was also a genuine Englishman, as can be judged by the remark that we must normally tolerate the weaknesses of our rulers and by his invectives against clerical rapacity.

Soon after the Council of Clarendon in 1164 John found it expedient to leave England. In this year he began to revise his remarkable *Historia pontificalis*, which carried on from the year 1148 the Gembloux continuation of Sigebert's chronicle. For the next six years he lived with his friend Peter de la Celle at Reims. From abroad he did his best to reconcile Becket with the king; and when peace appeared to be in sight he returned in November, 1170, and was with the archbishop at Canterbury when the murderers entered the cathedral. In 1176 he became bishop of Chartres and in 1179 attended the Third Lateran Council.

#### E. F. JACOB

*Works:* *Opera omnia*, ed. by J. A. Giles, 5 vols. (Oxford 1848), the *Policraticus*, 2 vols. (Oxford 1909), and the *Metalogicus* (Oxford 1929) have been edited by C. C. J. Webb; *Historia pontificalis*, ed. by R. L. Poole (Oxford 1927).

*Consult:* *Materials for the History of Thomas Becket*, ed. by J. C. Robertson, *Rerum britannicarum mediævi scriptores*, no. 67, 7 vols. (London 1875–85); Schaarschmidt, C., *Johannes Saresberiensis nach Leben und Studien* (Leipzig 1862); Demmuid, M., *Jean de Salisbury* (Paris 1873); Webb, C. C. J., *John of Salisbury* (London 1932); Poole, R. L., *Illustrations of the History of Medieval Thought and Learning* (2nd ed. London 1920) ch. vii, and “The Masters of the Schools at Paris and Chartres in John of Salisbury's Time” in *English Historical Review*, vol. xxxv (1920) 321–42, and “The Early Correspondence of John of Salisbury” in *British Academy, Proceedings*, vol. xi (1924–25) 27–53; Stubbs, William, *Seventeen Lectures on the Study of Medieval and Modern History* (Oxford 1886) chs. vi–vii; Carlyle, R. W. and A. J., *A History of Mediaeval Political Theory in the West*, vols. i–v

(Edinburgh 1903–28) vol. iii, p. 136–46, vol. iv, p. 330–41; Dickinson, J., “The Mediaeval Conception of Kingship . . . in the *Policraticus* of John of Salisbury” in *Speculum*, vol. i (1926) 308–37; Jacob, E. F., “John of Salisbury and the *Policraticus*” in *The Social and Political Ideas of Some Great Mediaeval Thinkers*, ed. by F. J. C. Hearnshaw (London 1923) p. 53–84.

JOHNSON, GEORGE (1837–1911), Canadian statistician. Johnson entered upon a journalistic career in Halifax, became editor of the *Halifax Reporter* and then Ottawa correspondent of the *Toronto Mail*. An early advocate of the confederation of the Canadian provinces, he took a prominent part in the troubled politics of the Maritime Provinces in the confederation era; subsequently he strongly espoused the adoption of protection as a Canadian national policy and the building of the Canadian Pacific Railway. His first official position was that of chief census commissioner for Nova Scotia in 1881. From 1887 to 1906 he was chief government statistician and directed the taking of the third census of the dominion in 1891. In 1886 he was instrumental in founding the official *Statistical Year Book of Canada*, and he edited the issues for the years 1892 to 1904 inclusive. The *Statistical Year Book* was a noteworthy compilation for its day; Johnson realizing that the state is not a series of heterogeneous activities was among the first to grasp the importance of a general purview in statistical organization. His memoranda to this end, and in particular one which was officially printed in 1890, were of pronounced effect.

#### R. H. COATS

*Important works:* Canada, Department of Agriculture, *Canada: Its History, Productions and Natural Resources* (Ottawa 1886), and *Canada: Its History, Productions and Natural Resources* (Ottawa 1900, rev. ed. 1904), *Alphabet of First Things in Canada* (Ottawa 1889, 3rd ed. 1897); *Johnson's Graphic Statistics of Canada* (Ottawa 1887); “Railways” in Canada, Department of Agriculture, *Statistical Year Book of Canada*, vol. x (Ottawa 1895) ch. vii. Johnson also edited *The All Red Line: the Annals and Aims of the Pacific Cable Project* (Ottawa 1903).

JOHNSON, JOSEPH FRENCH (1853–1925), American pioneer in commercial education. Johnson's most significant work lay in organizing the teaching and the training of teachers of business subjects. Under his guidance the School of Commerce, Accounts and Finance of New York University, of which he was dean from its early formative years until his death, expanded steadily. The success of the Alexander Hamilton Institute, which he founded in 1909 to bring his

teaching material and methods by means of home study to people actively engaged in business, indicates how effectively he met the need for executive training. As a teacher Johnson made the principles of economics understandable to the business man through vivid concrete illustrations of business problems. Here his early experience as a journalist stood him in good stead. He felt, however, that economics for the business man should include not only a presentation of the general principles but an inductive and descriptive study of specific fields of economic activity. To this end he organized at the School of Commerce groups of courses in such subjects as accounting, banking, investments and corporation finance, a grouping which is now found in all collegiate schools of business. For the same purpose he edited for the Alexander Hamilton Institute a popular series of texts on *Modern Business*. Throughout his work as teacher and organizer Johnson insisted on economic theory as a basis for the more specialized fields of study. He believed, however, that those engaged in business were especially interested in and in many respects best qualified to study the science of business. In his own work as a member of the National Monetary Commission, in his writings on questions of money and banking and in his studies of governmental control of business activity Johnson stressed the importance of economics in the practical affairs of business and statecraft.

#### A. WELLINGTON TAYLOR

*Important works:* *Money and Currency in Relation to Industry, Prices and the Rate of Interest* (Boston 1905, new ed. 1921); *The Canadian Banking System*, Publication of the United States National Monetary Commission (Washington 1910); *Organized Business Knowledge* (New York 1923).

JOHNSON, SAMUEL (1709-84), English journalist, lexicographer, critic. Johnson has been called the first "man of letters" in the sense that he made all of literature his field and pursued it as a profession, disdaining the support of patronage. The famous letter to Lord Chesterfield in fact has been held to symbolize the end of literary patronage as a means of subsistence for the writer. For the latter half of his life Johnson was the dominating force in English letters, ruling taste, fixing a prose style and enforcing his personality to an extent that well merited his nickname of the "Great Cham." His *Dictionary of the English Language* (2 vols., London 1755; new ed. by P. A. Nuttall, London 1855), published after eight years of prepara-

tion, was the first English dictionary to be compiled with a scholarly and profound talent for definition despite the current ignorance of etymology. It was an important influence in molding English usage, and even today, although the works of specialists have surpassed it in many ways, it remains a masterpiece in clarity of thinking.

Johnson's political ideas, which apart from a few pamphlets written at the request of the government appear mostly in the form of *obiter dicta*, are those of a strong eighteenth century Tory but are too individual to be regarded as typical. His devotion to the monarchy was fundamentally emotional, but his belief in the absolute power of sovereignty was reasoned. "There must in every society be some power or other from which there is no appeal." This was to him a matter of fact; but it was equally true that if the government abused its position too much the people would rebel. Johnson's objection to the American Revolution (as seen especially in *Taxation No Tyranny*, 1775) was not entirely mere prejudice; it arose also partly because the revolution did not appear to him to be based on such practical grievances as alone might explain—one can hardly say justify—rebellion and partly because any claim founded on principles of equality could not be put forward, he thought, on behalf of a slave owning society. Although he abused Rousseau, Johnson had a certain belief in the natural rights of man which made him an early and uncompromising enemy to slavery. Similarly, although devoted to the Church of England he criticized severely the intolerance of the English government in Ireland. In economic matters he took little interest, his sole work of the slightest importance in this field being a tract entitled *Considerations on the Corn Laws* (1766, first published in W. G. Hamilton's *Parliamentary Logick*, London 1808). This defends the export bounty on corn on the ground that by stimulating production it lowers the price and decreases the risk of famine. A believer in the rule of the landed proprietage, he insisted on its responsibilities and approved, for instance, the English system of poor laws. His nature was fundamentally religious and his conservatism at bottom a belief that man being naturally rebellious requires the control provided by custom and strong government.

#### ALFRED COBBAN

*Works:* In addition to his literary works Samuel Johnson wrote the following political pamphlets: *The False Alarm* (London 1770); *Thoughts on the Late*

*Transactions respecting Falkland's Islands* (London 1771); *The Patriot* (London 1774); *Taxation No Tyranny* (London 1775).

*Consult:* Boswell, James, *Life of Johnson*, ed. by G. B. Hill, 6 vols. (Oxford 1887); Stephen, Leslie, *Samuel Johnson*, English Men of Letters series (London 1878), and *History of English Thought in the Eighteenth Century*, 2 vols. (3rd ed. London 1902) vol. II, p. 206-09, 374-76; O'Brien, George, "Dr. Samuel Johnson as an Economist" in *Studies* (Dublin), vol. xiv (1925) 80-101; Harvey, C. W., "Johnson's Hatred of America" in *Cornhill Magazine*, n.s., vol. lxvii (1929) 655-68.

**JOHNSON, TOM LOFTIN** (1854-1911), American municipal reformer. Johnson acquired a substantial fortune in his early twenties through his inventions and his skill in managing street car properties; he later obtained traction interests in Indianapolis, Cleveland, Detroit and Brooklyn, as well as iron manufactures in Ohio and Pennsylvania. Through a casual reading of *Social Problems* he became a convert to the doctrines of Henry George. Convinced of the injustice of a society which permitted large fortunes like his own to be acquired through monopolistic practices, Johnson determined by political action to strike a blow at monopoly. After one defeat he was elected to Congress as a free trade, single tax Democrat and served two terms in the House of Representatives (1891-95).

A convinced believer in decentralized government and direct democracy, he conceived the city to be the most promising field of political activity. He sold his railroad properties and in 1901 was elected mayor of Cleveland on a public ownership, three-cent fare platform. He was three times reelected but encountered strong opposition to his plans for cheap traction. A settlement achieved in 1908 was repudiated by a narrow majority in a referendum; lowered earnings, an economic depression and a strike had destroyed public confidence in his traction policy. However, the three-cent fare he had established remained in effect for a time under the privately owned company.

Johnson's administration was also distinguished by improvements in parks and playgrounds, municipal sanitation and city purchasing and by the establishment of farm colonies for defectives and delinquents and group planning for city building. He was described by a co-worker as "the greatest administrator, the most efficient executive that the radical movement has produced in this country." He brought into public life such leaders as Newton D. Baker, John N. Stockwell, W. B. Colver, Edward W. Bemis and Frederic C. Howe. Johnson's most

notable achievement was the creation of a civic spirit in Cleveland which stimulated the municipal reform movement throughout the country.

CARROLL H. WOODYDY

*Consult:* Johnson, Tom L., *My Story*, ed. by Elizabeth J. Hauser (New York 1911); Lorenz, Carl, *Tom L. Johnson, Mayor of Cleveland* (New York 1911); Howe, Frederic C., *Confessions of a Reformer* (New York 1926); Steffens, Lincoln, *Autobiography*, 2 vols. (New York 1931) chs. xvi and xvii.

**JOHNSTON, SIR HARRY HAMILTON** (1858-1927), British colonial administrator and ethnographer. Johnston's career provides an outstanding example of the mingling of scientific curiosity with imperialistic and administrative ardor in the "scramble for Africa." After engaging in explorations in Angola and along Stanley's Congo trail Johnston in 1884 led an expedition to Mount Kilimanjaro; this expedition, scientific in its nature, masked the negotiation of numerous treaties and concessions with native princes, some of which became the basis of British rule in Kenya. An article in the London *Times* of August 22, 1888, in which he outlined the course which British expansion was to attempt to follow in Africa, including the "Cape to Cairo" idea, was the sequel to a discussion with Lord Salisbury. Johnston began his administrative and consular career in the Cameroons in 1885. From 1889 to 1896 he was engaged in the acquisition and administration of the Nyasaland protectorate, aided financially by Cecil Rhodes, for whom he also administered other territories within this period. From 1899 to 1901 he undertook the definite organization of the Uganda protectorate. His last African mission, undertaken on behalf of British rubber interests in Liberia, was unsuccessful in its objects, although Johnston aided the establishment there of an American financial protectorate. His administrative policies emphasized watchful cooperation with other colonial powers, free trade, the suppression of the slave traffic, neutrality toward missionary enterprise and marked sympathy for native institutions, with the partial exception of communal land tenures. In large volumes he collated the data of the physical and economic geography, biology, physical anthropology, ethnography and linguistics of the regions in which he served. He wrote voluminously upon the history and problems of expansion and of the contacts of white and colored races, including the American Negro question. He maintained that the so-called backward peoples benefited by these contacts in so far as they implied gradual assimila-

tion of European culture under benevolent white mastery. His outstanding work is the *Comparative Study of the Bantu and Semi-Bantu Languages* (2 vols., Oxford 1919-22), a compendium of contemporary knowledge of the subject. Although his formal and theoretical training was limited, art studies and a freedom from theological preconceptions brought acuteness and objectivity to Johnston's observations.

#### LELAND H. JENKS

*Works: The Story of My Life* (London 1923), with bibliography; *The Kilima-Nyaro Expedition* (London 1886); *British Central Africa* (London 1897, 2nd ed. 1898); *The Uganda Protectorate*, 2 vols. (London 1902, 2nd ed. 1904); *Liberia*, 2 vols. (London 1906); *Livingstone and the Exploration of Central Africa* (London 1891); *George Grenfell and the Congo*, 2 vols. (London 1908); *A History of the Colonization of Africa by Alien Races* (Cambridge, Eng. 1899; rev. ed. 1913), *Britain across the Seas . . . A History and Description of the British Empire in Africa* (London 1910), *The Negro in the New World* (London 1910); *The Backward Peoples and Our Relations with Them* (London 1920); *Common Sense in Foreign Policy* (London 1913), *Views and Reviews, from the Outlook of an Anthropologist* (London 1912).

*Consult:* Shepherd, W. R., "Common Sense in Foreign Policy" in *Political Science Quarterly*, vol. xxxi (1916) 122-42.

JOINT COST. *See* COST; OVERHEAD COSTS.

JOINT STOCK COMPANY. The phrase joint stock company is capable of various interpretations. Interpreted broadly it signifies a company or group of persons associating in the provision of a fund of goods or money to undertake some common business enterprise. It is, however, more commonly interpreted to include only associations of persons providing a joint stock and pursuing a common enterprise, membership in which is evidenced by transferable shares.

The earliest English trading corporations, the "regulated" or "open" companies, such as the Merchant Adventurers, do not fall within this definition. As corporations they held exclusive trading rights and possessed a common purse which was employed for collective defense, the maintenance of ambassadors and the charitable assistance of members. But the members traded on their own behalf and supposedly in competition with each other. Groups of members did, however, cooperate to trade with a joint stock and in the sixteenth century the ideas of the incorporated company and of joint stock trading were united in the incorporation of the Muscovy, Levant, East India and other companies, all of

which possessed exclusive trading privileges. The device of permanent stock freely transferable developed but slowly during the succeeding century. Toward the end of the seventeenth century the speculative possibilities of transferable stocks and the profitableness of company promotion greatly stimulated the formation of unincorporated associations, called companies but regarded at law as partnerships and possessing no exclusive trading privileges. Their inability to sue or to be sued except in the names of all their members as well as the unlimited liability of their members gave rise to confusion, and the frenzied speculation in the shares of such companies during the early years of the eighteenth century resulted in the Bubble Act of 1719 prohibiting the formation of joint stock companies except by royal charter. The act was never effective, largely because of its unintelligibility, and when it was repealed in 1825 the aggregate capital of the unincorporated companies in existence was estimated at between £160,000,000 and £200,000,000. The statute then passed amended the common law to permit the chartering of companies without endowing them with unlimited liability; unchartered companies remain subjected to the common law, the provisions of which with regard to such companies were still far from clear. In 1834 authority was given to endow them by letters patent with the right to sue and to be sued in their own names; in 1844 provision was made for registration and incorporation without limitation upon liability, the latter privilege being finally granted in 1855. Since 1862 it has been illegal to form any new company, association or partnership consisting of more than twenty persons (ten if engaged in banking) for the acquisition of gain without registering the formation under the companies acts (unless the company is regulated by special statute or protected by letters patent). As all companies registered are incorporated, the unincorporated joint stock company no longer exists in England. Not all incorporated companies, however, are strictly joint stock companies: companies are incorporated which are "limited by guarantee" and such companies need have no capital stock. Nor do all incorporated companies enjoy limited liability: provision is made for incorporation with unlimited liability. Incorporated associations which would in America be called corporations are commonly referred to in England as joint stock companies or more loosely and less accurately as limited companies.

In the United States the common law right to

form unincorporated joint stock companies has never been withdrawn by statute and the term joint stock company has a technical meaning differentiating such common law associations from partnerships on the one hand and corporations on the other. Such a company is defined as an unincorporated partnership with a capital divided into shares (not necessarily all of one class) which are freely transferable, and ownership of at least one of which is essential to membership in the company. Relations between the members are regulated by a contract (the articles of association), which brings the association into being without any charter or grant by the state, except in jurisdictions where the common law has been modified by statute. A number of states, including Michigan, New Jersey, New York, Ohio, Pennsylvania and Virginia, have imposed varying degrees of statutory control, equivalent in some to the control exercised over corporations. Elsewhere joint stock companies pay no franchise tax and make no report to any public officer upon their formation or their transactions. In law such companies resemble corporations only in that they possess sufficient continuity of existence apart from their members for the withdrawal of a member not to terminate the existence of the company. In practise, however, they resemble corporations in that active control is exercised by a board of directors elected by the members (who have no power to contract on behalf of the company). The company cannot sue or be sued in its own name, although in many jurisdictions it may—in some it must—be sued through its officers in the first instance. It is incapable of holding real estate, which is usually vested in trustees appointed for the purpose. The members are jointly and severally responsible without limit for the debts of the company unless every contract provides that the property of the company alone shall be bound. The joint stock company is not now a common form of business organization, partly on account of the liability of members for all the debts of the company and partly on account of the greater convenience of the corporation (*q.v.*), facilities for the formation of which have been rapidly extended since the removal in the early nineteenth century of the necessity of special legislation to secure incorporation.

The development of the limited partnership in many jurisdictions has given rise to a form of organization allied to the joint stock company. Partnership in which the liability of some partners for the debts of the group is limited (such

partners usually having only restricted rights to participate in management) is permitted in France, where it is known as a *société en commandite*; in Germany, where it is known as a *Kommanditgesellschaft*; in England and in most American states. In both France and Germany, however, the rights of the members whose liability is limited may be represented by shares similar in all respects to those issued by corporations. Such a *société en commandite par actions* in France or *Kommanditgesellschaft auf Aktien* in Germany resembles a corporation at least one of whose members is responsible without limit for the debts of the corporation. In Pennsylvania and Michigan provision is made for quasi-corporations known as partnership associations, the liability of all the members of which is limited and which may issue stock certificates representing the interests of the partners; the certificates are, however, not freely transferable and members have the right to refuse to accept any transferee as a member.

Special facilities have also been provided since 1892 in Germany and since 1900 in England for the further extension of the privilege of incorporation with limited liability to firms owned by a relatively small number of persons desirous of avoiding the publicity and regulation imposed upon corporations. Both the *Gesellschaft mit beschränkter Haftung* (G.M.B.H.) in Germany and the private company in England have a capital divided into shares. The shares of the former are not negotiable, the company having the right to control their transfer. The transfer of the shares of the private company must always be restricted. It may not invite public subscription to issues of shares or bonds nor may it permit the number of its stockholders to exceed fifty (subject to exceptions arising out of employee stock ownership) or to fall below two. The G.M.B.H. although intended for small enterprises has been more widely used than was anticipated, and many of the largest and best known German enterprises are organized in this form.

The most evident consequence of the employment of the principle of joint stock is the development of enterprises of enormous size under single control. In the sixteenth and seventeenth centuries, however, the opportunities it offered for the distribution of risk appear to have been more important. Political incapacity to provide for the security of property and the difficulties of transportation attached considerable risk to trade with distant parts; these risks were diminished by the establishment of large companies capable

of providing for the defense of their property and were more widely spread by the inclusion of a number of voyage risks within a single account and the facilitation of membership in a number of companies. The opportunities for fraud offered by the divorce of the control of property from its ownership in the joint stock company were first exploited on a large scale in the early years of the eighteenth century. Although two joint stock companies were incorporated in England in 1568 to engage in mining, it was not until the nineteenth century that changes in the technique of production involving division of labor and the employment of durable equipment upon a scale larger than ever before stimulated the general application of the principle of joint stock first to canals and railroads and later to manufacturing. The rapid and progressive increase in the size of corporate units gives rise to serious questions concerning the consequences of the increasingly wide separation of ownership from control and the progressive concentration of control. Theoretical analysis of these consequences has made little progress, and, partly in consequence, the problem of the proper policy of social control remains unsolved.

ARTHUR ROBERT BURNS

See: CORPORATION, CHARTERED COMPANIES; STOCKS; PARTNERSHIP; BUBBLES, SPECULATIVE.

Consult: United States, Library of Congress, Division of Bibliography, *List of References on Joint-Stock Companies*, Select List of References, no. 319 (1919); Scott, William Robert, *The Constitution and Finance of English, Scottish and Irish Joint-Stock Companies to 1720*, 3 vols. (Cambridge, Eng. 1910-12) vol. i; Lipson, Ephraim, *An Introduction to the Economic History of England*, 3 vols. (vol. i 4th ed., vols. ii-iii 1st ed. London 1926-31) vol. ii, Shannon, H. A., "The Coming of General Limited Liability" in *Economic History*, vol. ii (1930-32) 267-91, Berle, A. A., Jr., *Studies in the Law of Corporation Finance* (Chicago 1928) p. 59-63, Stockder, A. H., *Business Ownership Organization* (New York 1922) ch. vi; Liefmann, Robert, *Die Unternehmungsformen* (4th ed. rev. Stuttgart 1928) p. 73-102; Liebel, Leonard, *Die wirtschaftliche Struktur der Gesellschaft mit beschränkter Haftung*, Betriebs- und finanzwirtschaftliche Forschungen, 2nd ser., vol. iv (Berlin 1931), Pic, P. J. V., *Des sociétés commerciales*, 3 vols. (2nd ed. Paris 1925-26) vol. ii, and vol. iii, sects. 1219-1734.

JOLY, CLAUDE (1607-1700), French political theorist. Joly first became a lawyer but at the age of twenty-four took orders and was later appointed canon of Notre Dame in Paris. He accompanied the duke of Longueville to the Congress of Münster and retired to Rome during the *Fronde*.

Joly's writings are characteristic of the intellectual unrest which marked the troubled period of the *Fronde* and which inspired the many timely political pamphlets known as *Mazarinades*. Among them his pamphlets stand out because of their synthetic and philosophic treatment of the problems of government. His most significant work is the *Recueil* . . . , which was condemned by the tribunal of the Châtelet. Joly maintained that this work was by no means factional but on the contrary conformed to traditional French political principles. Opposed to despotism, he declared that the people had actually instituted the kingship and that consequently kings derived their authority from them. This theory he attempted to reconcile by rather subtle arguments with the principle of the divine right of kings.

Since the royal power is derived and is therefore not unlimited, as self-interested counselors pretend, sovereigns cannot infringe upon certain individual rights specifically reserved to the people by a sort of pact between rulers and their individual subjects. Of these rights, Joly pronounced himself vigorously in favor of liberty of the press and of religious toleration as formulated by the Edict of Nantes. Moreover kings have no authority to impose taxes without the consent of their subjects. Fortifying his position with examples from history Joly held that every new tax should be submitted to the Estates General or in lieu of this institution to the *parlement*, which he believed had issued from it. The king moreover cannot undertake war without consulting his subjects. The people may also demand the dismissal of incompetent ministers—a statement which evidently alludes to Mazarin.

Joly offers few precise ideas for the practical reform of administration. He showed some hostility toward the institutions of the intendant and the governor and stressed the vexatious abuses of power by the military. On the religious question he favored the liberties of the Gallican church. Joly considered himself quite the opposite of revolutionary; nevertheless, as an adversary of the absolutist principles which triumphed under Louis XIV he is a precursor of the liberal writers of the eighteenth century.

HENRI SÉE

Important works: *Recueil de maximes véritables et importantes pour l'institution du roy* (Paris 1652; new ed. with two lettres apologétiques, 1663); *Traté des restitutions des grands* (Paris 1665, 2nd ed. 1680); *Le codicille d'or* (Paris 1665).

Consult: Brissaud, Jean, *Un libéral au XVII<sup>e</sup> siècle*,



*Claude Joly (1607-1700)* (Paris 1988); Kotowitsch, L. M., *Die Staatstheorien im Zeitalter der Fronde 1648-1652*, Zürcher Beiträge zur Rechtswissenschaft, vol. xlviii (Aarau 1913) p. 110-23; Sée, Henri *Les idées politiques en France au XVII<sup>e</sup> siècle* (Paris 1923) p. 108-23; Lacour-Goyet, Georges, *L'éducation politique de Louis XIV* (2nd ed. Paris 1923) p. 59-65, 233-39.

JONES, ABSALOM (1746-1818), American Negro religious organizer. In 1762 Jones, who was born a slave in Sussex, Delaware, came with his master to Philadelphia, where he was permitted to enter night school. In 1784 he was granted his freedom, but he continued to work for his former master and accumulated property of considerable value.

The Negro worshippers in St. George's Methodist Episcopal Church in Philadelphia, humiliated by the treatment accorded them, withdrew in 1787 under the leadership of Jones and Richard Allen and formed the Free African Society. The objects of the organization, which represents the first attempt in the United States at group organization by the Negro people, were the exercise of discipline over the personal lives of its members and the extension of mutual aid in the time of distress without regard to religious tenets. Divisions arose within the organization over religious attachments. Allen decided to establish the African Methodist Episcopal church, of which he became the first bishop. Jones sympathized with Allen but finally yielded to the opinion of the majority and affiliated with the Protestant Episcopal church. In 1791 the society changed its name to the Elders and Deacons of the African Church and in 1794 to the St. Thomas African Episcopal Church of Philadelphia. Jones was ordained to the priesthood in 1804; he was the first Negro priest of this denomination in the United States.

In 1793, when an epidemic spread throughout Philadelphia, Jones and Allen took the leadership in the organization of relief measures for the Negro population and later published an account of these efforts. Jones also founded and operated an insurance company, organized a society for the suppression of vice and immorality and with Allen and James Forten raised a brigade of 3000 Negro soldiers for the War of 1812.

CHARLES H. WESLEY

*Consult:* Jones, Absalom, and Allen, Richard, *A Narrative of the Proceedings of the Black People during the Late Awful Calamity in Philadelphia in the Year 1793* (Philadelphia 1794); Bragg, George F., *The First Negro Organization* (Baltimore 1924), and Richard Allen

and Absalom Jones (Baltimore 1916); Douglass, William, *Annals of . . . the African Episcopal Church of St. Thomas, Philadelphia* (Philadelphia 1862) p. 118-22; DuBois, W. E. B., *The Negro Church*, Atlanta University publications, no. viii (Atlanta 1903).

JONES, ERNEST CHARLES (1819-69), English politician. After a youth passed in aristocratic circles in Germany and England, Ernest Jones became a barrister and litterateur. An early tendency toward radicalism increased until he became in 1846 a leader of the Chartist movement, then approaching its final stage. As member of the Fraternal Democrats, an association largely composed of foreign refugees, he helped impart to Chartism an international outlook. While Jones made no important contribution to socialist thought, his leadership of the Chartist movement was characterized by a spirit of militant socialism which was intensified by direct contact with Karl Marx in the early 1850's. His newspapers, *Notes to the People* (1851-52) and the *People's Paper* (1852-58), propagated Marxian doctrines, especially that of the class struggle; and Engels said in 1869 that Jones was the only prominent English politician who thoroughly understood the socialist movement.

Failing to win over the mass of workers to a class struggle position, he adopted the program of a middle class political alliance. In 1858 he formed a manhood suffrage association of both classes which helped launch the movement that secured the franchise for urban workers in 1867. Throughout the agitation Jones was the uncompromising advocate of democracy and was the chief bridge between Chartism and working class radicalism. In the election of 1868 his strength with labor electors forced the Liberals to accept him as a candidate for Manchester; although he was defeated he received a large vote.

FRANCES E. GILLESPIE

*Consult:* Hovell, M., *The Chartist Movement* (Manchester 1918); Gillespie, F. E., *Labor and Politics in England 1850-1867* (Durham, N. C. 1927); Beer, M., *A History of British Socialism*, 2 vols. (London 1919-20) vol. ii; Rothstein, Theodore, *From Chartism to Labourism* (London 1929).

JONES, LLOYD (1811-86), British cooperator. A skilled tailor and trade unionist, Jones was converted to Owenite socialism in his twenties. His attitude to the labor movement was largely determined by the view that the central problem was "the relation of the workman to his work." As an Owenite missionary upholding the principle of "reason" he frequently clashed with Chartist leaders. Although indifferent to religion

he was attracted by those elements in Christian Socialism which stressed cooperative production and the importance of social as distinct from political evils, and he brought to this movement not only exceptional gifts of tongue and pen but a wide knowledge of the labor movement.

While he approved of arbitration and acted as union advocate in arbitration proceedings he opposed sliding scales and held that the overstocking of a market should be met not by reducing wages but by restricting supply. The maintenance of wage levels alone left untouched the social evils arising from the divorce of the workman from his work, and Jones asserted that to deal with these wider problems cooperation was necessary.

He was active in federating retail cooperative societies. He approved of the cooperative dividend and held that the main question of distributive cooperation was whether the shareholders would be willing to share profits with the workmen instead of treating them as mere "hands" and, if they did, whether they could make their capital remunerative in a competitive world. Distributive cooperation had, he said, broken down in generosity on this crucial point.

PERCY FORD

*Important works:* *Cooperation; Its Position, Its Policy and Prospects* (London 1877); *The Life, Times and Labour of Robert Owen*, ed. by W. C. Jones, 2 vols. (London 1890) with biographical sketch; *Progress of the Working Class*, written in collaboration with J. M. Ludlow (London 1867).

*Consult:* Beer, Max, *History of British Socialism*, 2 vols. (London 1919-20) vol. ii; Holyoake, G. J., *The History of Cooperation*, 2 vols. (rev. ed. London 1906) vol. i.

JONES, MARY (Mother) (1830-1930), American labor agitator. Mother Jones was born in Ireland of a working class family and came to America when she was six years old. After a series of misfortunes which left her destitute she was inspired by the Knights of Labor movement to become a crusader in behalf of American labor. In 1873 she took part in the strike of the Baltimore and Ohio Railroad employees and from that year until her death was actively associated with the labor struggle. For years she appeared in most of the major strikes, often by invitation of the leaders but many times by her ability to insinuate herself into a lead. She did most of her work among the miners, with whose union she remained closely associated all her life, and her work was particularly effective in West Virginia and Colorado, where as a result

of her complete fearlessness she was frequently in jail.

Essentially she was a revolutionist, although she never fully analyzed her own program or adopted any one revolutionary philosophy. She participated as effectively in strikes of the Industrial Workers of the World and other revolutionary bodies as in those of the ultraconservative unions of the American Federation of Labor, but from every platform she urged the workers to destroy capitalist society. She had no sympathy with woman suffrage or any other woman's movement, but she urged women to play their part in the class struggle and organized them into brigades for all strikes. Child labor was particularly abhorrent to her, arousing her to her most spectacular activities.

In the union office she was out of place, quarreling with officials, offering no constructive policy of her own and constantly violating union policy. It was in the field that she made her real contribution. With one speech she often threw a whole community on strike and she could keep the strikers loyal month after month on empty stomachs and behind prison bars. By virtue of her outstanding personality, intrepid daring and complete devotion to their cause Mother Jones captured the imagination of the American workers as no other woman has yet done.

TOM TIPPETT

*Consult:* *Autobiography of Mother Jones*, ed. by M. F. Parton (Chicago 1925).

JONES, RICHARD (1790-1855), English economist, cleric and administrator. Jones, who was educated at Cambridge, became professor of political economy at King's College, London, in 1833 and two years later succeeded Malthus at East India College, Haileybury, where he continued to teach until shortly before his death. Between 1836 and 1851 as a commissioner of tithes he played an important part in administering the act providing for the commutation of tithes, publishing various pamphlets on the subject; after 1851 he was active in other administrative capacities.

At a time when the Ricardian approach dominated English economic thought Jones asserted the claims of the historical method, stressed the significance of statistics and emphasized the influence of past experience and social institutions upon human behavior. He is best known for his attack upon the Ricardian theory of rent. He claimed that the pessimistic conclusion that rents could increase only at the expense of other in-

comes arose out of a confusion between proportions and absolute amounts and that the Ricardian assumption of diminishing returns ignored the inventive capacity of man and the effect upon production of increasing investment in capital equipment. Attributing Ricardo's theory to a too exclusive attention to English institutions he attempted to demonstrate by a comparative study of systems of land tenure the variety of influences determining rent. The first part of his *An Essay on the Distribution of Wealth and the Sources of Taxation* (London 1831) has been republished under the title *Peasant Rents* (London 1895). While his failure adequately to appreciate the concept of differential rent exposed him to attack, his emphasis upon property laws as a determinant of distribution has now been accepted by economists. Approaching the theory of production from the same standpoint he emphasized the influence of institutional factors in determining the reaction of the labor force to an increase in remuneration, advancing thereby powerful arguments against the contemporary view that increases in wages almost inevitably stimulate population growth. His analysis of the influences affecting the accumulation of capital, wherein he again took issue with Ricardo, was later elaborated by Sidgwick and Cannan.

Despite its freshness of approach the relatively minor influence of Jones' work must be attributed in part to the entrenched position of the Ricardian group but perhaps even more to the pressure of his teaching and administrative duties and to his disinclination to writing. He published no comprehensive and systematic development of his ideas; his lectures, occasional essays and comments were published after his death, together with a sympathetic memoir, by his admirer William Whewell as *Literary Remains* (London 1859). Despite repetition and lack of order they reveal an original and occasionally brilliant mind.

E. M. BURNS

*Consult:* Chao Nai-Tuan, *Richard Jones* (New York 1930); Ingram, John Kells, *A History of Political Economy* (London 1915) p. 139-42; Hilferding, Rudolf, in *Neue Zeit*, vol. xxx, pt. i (1911-12) 343-54.

JONESCU, TAKE. *See* IONESCU, TAKE.

JORDAN, DAVID STARR (1851-1931), American naturalist, educator and social philosopher. Jordan's contributions in various fields of natural science, notably in ichthyology, were reflections of his underlying interest in the relation

of the species to environment. In a number of works written between 1902 and 1915 he developed the concept of the devastating effects of war on the human species. Although this hypothesis had been anticipated by Darwin in 1871 and developed by Novikov in 1894, Jordan was the first to give it thorough scientific support. His thesis that war by reverse selection leaves the weaker and less heroic to perpetuate the race was not universally accepted by authorities but furnished effective ammunition against popular social Darwinism. Jordan's researches and reflections confirmed his faith in democracy as the necessary condition of world peace. While rejecting socialism he insisted that profits must be eliminated from the war system. Just as he desired the students at Leland Stanford University, which he organized in 1891 and of which he was president and later president emeritus, to have the greatest freedom of choice after all the facts had been presented to them, so he wished to promote peace by an enlightened public opinion. As a lecturer at home and abroad, as a director of the World Peace Foundation and as the recipient of the Raphael Herman Award he turned the attention of the peace movement toward fact finding techniques. His consistent and at times heroic work for international peace gives him a permanent place in the history of the effort to apply science to social problems.

MERLE E. CURTI

*Important works.* *The Days of a Man*, 2 vols. (Yonkers, N. Y. 1922); *The Blood of the Nation* (Boston 1902); *The Human Harvest* (Boston 1907); *War's Aftermath* (Boston 1914); *War and the Breed* (Boston 1915); *War and Waste* (New York 1913); *The Unseen Empire* (Boston 1912); *Ways to Lasting Peace* (Indianapolis 1916); *Democracy and World Relations* (Yonkers 1918).

*Consult:* Evermann, B. W., in *Science*, vol. lxxiv (1931) 327-29; Rieber, C., "Apostles of World Unity: David Starr Jordan" in *World Unity*, vol. i (1927) 13-20.

JÖRG, JOSEPH EDMUND (1819-1901), Bavarian politician and Catholic publicist. Jörg served as assistant to Dollinger while engaged in historical studies which resulted in the publication of his *Deutschland in der Revolutions-Periode von 1522 bis 1526* (Freiburg i. Br. 1851). In 1852 he took over the direction of the *Historisch-politische Blätter* founded by Görres. From 1865 to 1881 he was a member of the Bavarian chamber, from 1874 to 1879 of the German Reichstag. He played a prominent role in Bavarian politics as leader of the patriotic People's party, which in 1869 secured the ma-

jority and brought about the fall of the liberal premier Hohenlohe. The party did not follow his lead, however, when in 1870 he opposed participation in the war with France and demanded an armed neutrality for Bavaria. He was likewise deserted by the party in 1871 when he repudiated the Versailles treaties for the foundation of the empire, which appeared to him an insufficient guaranty of the rights of Bavaria.

Jörg's basic political and social position was anti-Prussian and antiliberal. He had originally hoped that by agreement with Prussia there would be formed a Christian-German *Mitteleuropa* under Austrian-Hapsburg leadership, in which Bavaria could have a strong position. In the unification of Germany under Prussian leadership through the policies of Bismarck he saw a threat to the independence of Bavaria, a mediatization of all states by the house of Hohenzollern. Prussia appeared to him as a Protestant power and as the representative of a centralization directed against historical development and the cultivation of local peculiarities. Jörg's antiliberalism is displayed in a sharp critique of liberal economics. In his *Geschichte der sozial-politischen Parteien in Deutschland* (Freiburg i. Br. 1867) he welcomed the labor movement promoted by Lassalle, since it was directed against bourgeois liberalism, but definitely rejected Lassalle's general *Weltanschauung*. A healthy social reform, which preserves itself from excessive industrialism and consequent pauperism, he held, is possible only for a Christian society. Bismarck's socio-political legislation based on the state was contemptuously characterized by Jörg as centralistic and unmindful of the organic construction of society.

Jörg was gradually forgotten in the Catholic movement of Germany. No connection was possible between his position and the political and social evolution in which the Catholics in the Center party were cooperating through affirmation of the existing state and prominent participation in the construction of socio-political legislation. Only in late years since the crisis of 1918 in Bismarck's empire has there been a noticeable revival of interest in Jörg, especially in his unsystematically formulated critique of liberal economics interpreted as an actual critique of capitalism.

WALDEMAR GURIAN

Consult: Wöhler, Fritz, *Joseph Edmund Jörg und die sozialpolitischen Richtungen im deutschen Katholizismus* (Leipzig 1929), with an extensive bibliography.

JOSEPH II (1741-90), Holy Roman emperor. Joseph II represents the purest type of enlightened despot. Even while coregent with his mother, Maria Theresa, he sought to put into practise the new concept of the state which he had learned from the example of Frederick the Great, from Voltaire and from the French *encyclopédistes* and physiocrats. The monarch must be the first servant of the state and devote himself to the welfare of the people. But in order to be able to fulfil his duties he must be absolutely sovereign; he must not be bound by either statute or privilege, by church authority or by ancient law and custom. It is incorrect to consider Joseph II as the forerunner of modern democracy and equally so to see in him only a violent absolutist. His significance lies in the fact that he tried to combine the idea of the welfare state with that of the authoritarian state.

His foreign policy was imperialistic. He favored the partition of Poland in 1772, took Bukovina from Turkey in 1775, helped incite the war of Bavarian succession in 1778 in order to put the house of Austria in possession of lower Bavaria, pursued the scheme of a Hapsburg-Wittelsbach exchange of territories (the Netherlands for Bavaria) in 1785, concluded an alliance with Catherine II against the Porte in 1781 and played with the idea of a division of the world between Austria and Russia with Rome and Constantinople as the capitals. In his rule of the empire he revived the centralistic imperial policy of Charles V and Ferdinand II, reformed the decadent High Court of Justice in Vienna and endeavored to break the power of the German princes.

In his internal policy also Joseph endeavored primarily to strengthen and increase the national potentiality. He created new administrative districts, placed in the cities magistrates appointed by the throne, instituted paid judges and new rules of judicial procedure. He forcibly united the various states in Austrian territory, making German the official language in Hungary in 1784. This emphasis of state authority led necessarily to conflict with the church. In place of an ultramontane church Joseph wished to institute an Austrian national church and to bring it securely under the control of the emperor. "Josephinism" is accordingly an exact parallel to the Gallicanism of the French kings. The state was to educate the priests, manage the church's patrimony, regulate the forms of service and through its placet allow or deny church ordinances. Contact between the religious orders and

the generals of the orders outside Austria was forbidden. Marriage was removed from the church's jurisdiction and considered a purely civil contract.

Even his ecclesiastical policy was guided by his concept of the welfare state. Religion was judged according to its civil utility: of the two thousand monasteries a third were abolished by the law of 1781 since they served only asceticism and represented therefore "dead human capital"; the Protestants, Greek Catholics and Jews were granted toleration by the Patent of Tolerance, 1781, because they were farmers and workmen performing necessary functions. The humane views of the Enlightenment bore fruit in all possible fields. Joseph introduced general compulsory schooling; he built the first national hospitals, founding homes and insane asylums, thus becoming known as "the good Samaritan on the throne"; he did away with torture and trials for witchcraft, punished dueling and exercised a very tolerant censorship. More important was the struggle against the aristocracy and the abolition of the serfdom of the peasants, who moreover were thenceforth to remain on their property not as owners but as free copyholders. If the new land taxes which Joseph had planned had been preserved after his death they would have altered the entire social structure of Austria by virtue of the heavy burden they placed on the estates of the nobility. His reforms, however, were without permanent results. After ten years of illustrious but precipitate rule Joseph, the public benefactor, lived to see revolution break out against him in Belgium and Hungary because of his disregard for the old constitutional privileges of Brabant and for the national autonomy of Hungary.

#### RUDOLF STADELMANN

*Consult:* Häusser, L., *Deutsche Geschichte vom Tode Friedrichs des Grossen bis zur Gründung des deutschen Bundes*, 4 vols. (4th ed. Berlin 1869); Heigel, T. von, *Deutsche Geschichte vom Tode Friedrichs des Grossen bis zur Auflösung des alten Reiches*, 2 vols. (Stuttgart 1899-1911); Mitrofanov, P. P., *Politicheskaya deyatelnost' Iosifa II* (St. Petersburg 1907), tr. into German by Vera Demelić as *Joseph II.: seine politische und kulturelle Tätigkeit*, 2 vols. (Vienna 1910); Bright, J. D., *Joseph II.* (London 1897); Menzel, A., "Kaiser Josef II. und das Naturrecht" in *Zeitschrift für öffentliches Recht*, vol. i (1919-20) 511-28; Moog, G., "Die kirchliche Reform Josefs II." in *Internationale kirchliche Zeitschrift*, n.s., vol. vii (1917) 83-92; Ilwof, F., "Kaiser Joseph II. als Volkswirt" in *Preussische Jahrbücher*, vol. cxxix (1907) 277-301; Wolf, G., *Das Unterrichtswesen in Oesterreich unter Joseph II.* (Vienna 1880); Gnaul, Hermann, *Die Zensur unter Joseph II.* (Strasbourg 1910).

JOSEPHUS, FLAVIUS (Joseph ben Matthias) (c. 37-c. 100 A.D.), Jewish historian. Josephus was a scion of the high priests of Judea. He spent two years, 64 and 65, in Rome moving in circles close to the emperor Nero and became imbued with a very strong faith in the power of the sovereignty of the Roman Empire. Moved by Jewish patriotism, however, he joined for a brief period the insurrection in Judea in 66 and commanded the insurgents in Galilee. But the first attacks by the Roman army convinced him of the utter uselessness of the struggle of a small country against the world empire and he left his own people, joined the camp of the Roman chief Vespasian and during the siege of Jerusalem assumed the role of mediator between the two fighting armies. After the destruction of Jerusalem and the devastation of Judea (70-73) Josephus went to Rome in the retinue of the conquerors and lived thereafter at the court of the emperors Vespasian and Titus. Here he wrote in Greek his remarkable historical works, which are among the foremost masterpieces of ancient rhetorical historiography.

In his first important work, *The Jewish War*, Josephus recounted the cruelties of the Roman procurators in Judea which had driven the people to revolt and told of his own participation in the defense of Galilee. He placed the entire responsibility for the struggle and the subsequent destruction of Judea, however, upon the party of fanatical Judean Zealots, who continued to fight Rome even after it had become evident that the struggle was doomed. His work was apparently inspired by the Roman conquerors and was intended to serve as a warning to other peoples in the East against opposition and revolt. In his *Jewish Antiquities*, motivated by the desire to magnify Jewish civilization in the eyes of the Gentile world, Josephus attained the level of a historiographer of national scope in linking his own epoch to the remote period of the rise of the Jewish people. In his rhetorical fashion he recounts the contents of the historical books of the Bible and on the basis of Greek sources which have not survived and from the Apocryphal books, *Maccabees*, he describes the Greek domination in Judea, the independent reign of the Hasmonaeans, the reign of Herod and the Roman rule down to the last procurators. In spite of all the characteristic shortcomings of his historiographical method the presentation of the post-Biblical epochs in the two works of Josephus are of tremendous significance for the political and social history not only of Judea but of the

Graeco-Roman world in general. Josephus has saved from oblivion an extensive period in Jewish history and the sources pertinent to it. His works constitute a direct but more secularized continuation of the historical books of the Bible and of the Apocrypha. His autobiography is also of some social-historical interest as well as his apology for Judaism, *Against Apion*, in which he cites all examples of Judophobia in antiquity, particularly in the Jewish-Hellenic metropolis of Alexandria.

SIMON DUBNOW

*Works: Opera*, ed. by Benedict Niese, 7 vols. (Berlin 1885-95); *Oeuvres complètes de Flavius Josephus*, tr. by Théodore Reinach, J. Weill, and J. Chamonard, vols. i-v, vii (Paris 1900-29); *Josephus*, original Greek text and translation by H. St. J. Thackeray, Loeb Classical Library, vols. i-iv (London 1926-30) The first part of the Slavic Josephus has been translated into German by Alexander Berendts and Konrad Grass, *Vom jüdischen Kriege, Buch 1-19, nach der slavischen Übersetzung*, 2 vols (Dorpat 1924-27).

*Consult: Thackeray, H. St. John, Josephus, the Man and the Historian* (New York 1929); Laqueur, R. A., *Der jüdische Historiker Flavius Josephus* (Gießen 1920); Foakes Jackson, F. J., *Josephus and the Jews* (London 1930); Niese, Benedict, "Der jüdische Historiker Josephus" in *Historische Zeitschrift*, vol. lxxvi (1896) 193-237; Schurei, Emil, *Geschichte des jüdischen Volkes im Zeitalter Jesu Christi*, 4 vols. (4th ed. Leipzig 1901-11), tr. by Sophia Taylor and Peter Christie, 5 vols (2nd ed. Edinburgh 1886-90) vol i, p. 77-110 For the problem of the Slavic Josephus see Eisler, Robert, Ἰησοῦς βασιλεὺς οὐ βασιλεύσας: *Die messianische Unabhängigkeitsbewegung vom Auftreten Johannes des Täufer bis zum Untergang Jakobs des Gerechten* . . . , 2 vols. (Heidelberg 1929-30), partly tr. by A. H. Krappe as *The Messiah Jesus and John the Baptist* (London 1931).

JOST, ISAAC MARCUS (1793-1860), Jewish historian. Jost was born at Bernburg in Anhalt and after attending the Samsonschule at Wolfenbüttel he continued his studies at the universities of Berlin and Göttingen. He was principal of a private *Gymnasium* from 1825 to 1834 and passed the rest of his life as teacher at the Jewish Philanthropin in Frankfurt on the Main. For two years from 1839 to 1841 he edited the *Israelitische Annalen* for the purpose of collecting materials for Jewish history.

Jost is deservedly called the father of Jewish historiography. With no predecessors except the Frenchman Basnage, whose compilation he utilized, he collected and worked over the various sources of Jewish history. A rationalist, Jost displays not the slightest throb of romantic exaltation in his discussion of even the most martyr crowded eras of Jewish history. His rationalist

convictions, however, did not prevent him from being conservative in his analysis of sources, particularly those of the Biblical epoch. Although he held the view that the Talmud was the cause of Jewish misfortunes he appraised this collective creation of the Jewish people as an important historical source. A skeptic by nature, he still defended the "good will" of the Christian rulers and kings toward the Jews in the period of their exile. The most important part of his historical work, all of which retains its full value as a historical source, is the section in which he deals with his own epoch, the years 1815 to 1846. The parts dealing with the Jewish settlements in Germany in the Middle Ages are also of pioneer significance.

Jost made no contributions to historical methodology and he did not evince the analytical keenness characteristic of Graetz. His style is dry, his descriptions devoid of animation and fantasy; but for a long period his works were the only sources from which the Christian world drew its information concerning Judaism and the Jews. In his social and religious beliefs Jost was a moderate assimilationist and a supporter of the moderate reform movement.

JACOB SHATZKY

*Important works: Geschichte der Israeliten seit der Zeit der Maacabaer bis auf unsere Tage*, 10 vols. (Berlin 1820-47); *Geschichte des Judenthums und seiner Sekten*, 3 vols. (Leipzig 1857-59).

*Consult: Baion, S., "I. M. Jost the Historian" in American Academy for Jewish Research, Proceedings (1928-30) 7-32; Meisl, Josef, "Die jüdische Geschichtsschreibung" in Jude, vol. vi (1921-22) 283-96; Zirndorf, H., Isaac Markus Jost und seine Freunde (Cincinnati 1886).*

JOURDAN, ALFRED (1823-91), French economist. Jourdan was one of the small group of twelve professors appointed to teach political economy in the faculties of law in France when the subject was introduced in 1878. Apart from a mediocre work, *Épargne et capital* (Aix 1879), which is overloaded with moral and philosophical considerations and fails to achieve an exact analysis of the concept of capital, Jourdan left behind him two works on economics which are still read with interest. In *Du rôle de l'état dans l'ordre économique* (Paris 1882), crowned by the Institut de France in 1882, he develops the doctrine of individualism while avoiding the exaggerations of the orthodox school. A study of history, the laboratory of the social sciences, led Jourdan to conclude that the development of civilization is marked by a steady decline in state

regulation of economic activity. But at the same time that the state was abandoning direct economic paternalism it was engaging to an increasing degree in the task of providing the social facilities prerequisite to economic development, such as educational opportunities and social legislation. This double, parallel evolution expresses the law of progress. The recognition of this law led Jourdan to reject the extreme solutions of both socialism and uncompromising *anti-étatisme* and formulate the theory of moderate individualism. This "true" liberalism is notable for the support which it provided for the foundation of the *Revue d'économie politique* in 1887. Not allowing himself to be intimidated by the violent hostility of orthodox quarters, Jourdan accepted a post on the directing committee, where he represented, with Edmond Villey, the individualistic tendency, while Charles Gide and Léon Duguit supplied the note of interventionism and solidarism. In *Des rapports entre le droit et l'économie politique* (Paris 1885) Jourdan stressed the close relation of law and economics and argued that the two may be legitimately included in the same educational institutions.

GAËTAN PIROU

*Consult:* Waha, Raymund de, *Die Nationalökonomie in Frankreich* (Stuttgart 1910) p. 159-62; Gide, Charles, in *Revue d'économie politique*, vol. v (1891) 765-70; Schatz, Albert, *L'individualisme économique et social* (Paris 1907) p. 480-86.

**JOURNALISM** is one of the younger professions. Courants, gazettes and newsbooks flourished in England and on the continent in the second quarter of the seventeenth century and there were more than twenty English newspapers by the time of the Restoration, but until the latter part of the eighteenth century journalism remained rather a business or an adjunct of politics than a true profession. Only in a very loose sense are journalists justified in regarding Addison and Steele, Defoe, Swift (who edited the *Examiner* in 1710), Franklin and Marmontel as early figures in their profession. Addison and Steele, Swift and Marmontel were men of letters, Defoe was a pamphleteer and Franklin was a versatile business man. Assuming that a profession deserves the name only when it stands alone, requires a distinctive training, employs men for a lifetime of single minded endeavor and has a fixed set of non-commercial standards and aims, the profession of journalism was scarcely born until after 1760. Between then and 1800 there were in both Europe and

America a small but steadily increasing number of journalists who were something more than printers, party hacks or literary men temporarily using a newspaper or magazine as a mouthpiece. By 1776 there were well established and important newspapers in Germany (the *Frankfurter Postzeitung*, *Vossische Zeitung*, *Hamburgischer Correspondent* and others) and in France (the *Gazette de France*, the *Mercure de France*), fifty-three newspapers were published in London and the American colonies had thirty-seven—a firm basis for development.

Beginning with 1760 or 1770, four stages may be marked in the professional evolution of journalism. The first was the achievement of that degree of freedom of speech which is essential to enterprise, dignity and independence. In the United States the revolution completely unfettered the press; in England the battles of John Wilkes and Henry S. Woodfall for journalistic liberty, the establishment in 1771 of the right to print parliamentary proceedings and the passage in 1792 of Fox' Libel Act did almost as much; and on the continent the French Revolution had liberating effects. The second stage was the emergence of the press from party subservience to a broad appeal to the reading public. Until after 1815 the most important newspapers in Europe and the United States, apart from commercial gazettes, were supported by political groups. The ablest American editors, Philip Freneau and William Coleman, were set up by Jefferson and Hamilton respectively; the London *Public Advertiser*, in which the "Letters of Junius" appeared, the *North Briton* and the *Morning Post*, in which Coleridge's articles were said to have led to the rupture of the Treaty of Amiens, were all party organs; and in France Condorcet, Mirabeau and Brissot de Warville brought politics and journalism into the closest union. The divorce of the press from a servile dependence upon party took place first in the English speaking countries. It was achieved partly through political changes; partly by broadening the basis of newspaper support, the penny press of London about 1830 and of New York a few years later showing that the masses might be reached; and above all by an immense development of general news gathering at the expense of political articles. The enterprise of the Walter family in England and of James Gordon Bennett in the United States proved that far larger rewards might come from the sale of fresh and comprehensive intelligence than from that of party opinion.

The third stage in the development of the profession, that of individualistic leadership, witnessed the rise of a series of great editorial moulders of opinion. In the United States there were Greeley, Bryant, Dana and Godkin; in England Edward Sterling, John T. Delane and F. H. Hill; in France Lamennais and Prévost-Paradol. The profession now at its best level not only was dignified and lucrative but offered some great prizes in fame and influence. The leading Anglo-American editors exercised a power not inferior to that of the principal statesmen, and independence was an indispensable part of this power. On the continent and especially in France the professional journalist had close relations with the professional literary man, and in figures like Sainte-Beuve, whose essays appeared in the *Constitutionnel*, the *Temps* and the *Moniteur*, the two often became one. The fourth phase in the evolution of journalism witnessed a singular obliteration, at least in English speaking countries, of this individualistic leadership. Journalism was more and more affected by the vast proliferation of newspapers and other periodicals, the rise of news associations and syndicates, the increase in the semi-educated public, the ever growing demand for news over opinion and the heavier financial dependence on advertising. It became more of an impersonal mechanism—more complicated, more departmentalized and more standardized.

The professional character of the journalist has thus closely reflected social and economic changes from generation to generation. In the United States, for example, we find first a printer running a job-office and stationery shop in connection with a dingy weekly; then a party pamphleteer publishing long essays signed Brutus or Camillus; then an alert purveyor of news like the elder Bennett or a master of editorial thrust like Samuel Bowles; then a specialist sinking his personality in some department of a huge machine—answering to the eras of colonial provincialism, of eager political speculation, of pioneering individualism and economic laissez faire, and finally to the complex society of modern times. In Europe the evolution of the profession has similarly corresponded to that of society itself.

The journalist's early conception of his work in all countries lacked dignity. Dr. Johnson and others speak of the Grub Street hacks and political hirelings who infested the profession in England, and much French journalism during and after the Revolution was disgraceful. Bal-

zac's picture of the calling in *Les illusions perdues* is scathing. In the United States Bryant in the 1830's decried journalism as wrangling, brutal and vulgar; it attracted many ill trained men and Greeley thought a college education a positive disqualification; its ethical standards were weak and until long after the Civil War few American journals were closed to the more insidious forms of bribery; its relations to other callings were vague and it was widely regarded as a feeder to letters, law, politics or business. As reflected in literature, from Dickens' Jefferson Brick of the New York "Rowdy Journal" in *Martin Chuzzlewit* to Howells' Bartley Hubbard in *A Modern Instance*, the working journalist was likely to be a sorry figure. Some traditions of the printer-journalist era still survive and to many practitioners in all countries journalism is still a craft or "game." But as the profession has developed it has gained steadily in dignity. Lincoln greeted W. H. Russell of the London *Times* as he would have greeted a foreign minister, and in fact told him that the *Times* was the greatest power he knew except perhaps the Mississippi River.

The greatest recent change in the profession has been the specialization entailed by the complex task of gathering news from a thousand sources to satisfy a multitude of different demands. This specialization has gone furthest in English speaking countries, where newspapers are most bulky and comprehensive, but it is felt everywhere. Until the latter part of the nineteenth century the typical newspaperman was necessarily a jack-of-all-trades, as on small newspapers he must still be. But the large city daily of today from Buenos Aires to London includes two separate categories of specialized workers. Under the business manager (to use American nomenclature) are the advertising manager, circulation manager, promotion manager, mechanical superintendent and auditor, each with a force of skilled workers. The editorial department includes the editor and editorial writers—managing editor, city editor, telegraph editor, financial editor, dramatic and literary editors, sports editor and perhaps also the political editor, women's editor and real estate editor, with reporters and correspondents. News gathering now requires reporters skilled in some branch of human activity, such as politics, aviation or finance; expert rewrite men to handle not only copy from correspondents, press associations and other sources, but information telephoned from street reporters; and experi-



enced copyreaders. In metropolitan dailies headline writing, make up and feature writing are each assigned to specialists. Journalism in its larger definition now includes trade papers, magazines, sports papers, press associations, free lance writing and publicity work, and each of these also demands some special equipment. Thus training for the profession increasingly requires not only a general education and some talent or flair, but technical knowledge of a particular kind. Nearly all newspapermen have mastered a set of fundamental tools; the best must learn to master some unique tool as well.

As in law and medicine specialization has meant a steady increase in the tuition period, the establishment of schools and college courses to prepare men for the profession, a sharper distinction between the expert and the amateur and more insistence within the calling upon standards of ethics, dignity and accuracy. Journalists in all countries are still largely recruited from high schools, trade schools and general college courses, but they must go through a protracted apprenticeship. In some countries this apprenticeship has taken on a fairly formal character. In Austria, for example, the beginner enters as an "editorial stenographer" (roughly what the Anglo-American press calls a copyreader) and mounts the rungs.

Since 1900 there has been an almost world wide debate upon the value of schools of journalism, many defending such schools as making for a more expert profession and others declaring that practise is the best training and that schools will force a host of untalented and ill adapted men into the calling and lower the conditions of employment. It is in the United States that schools of journalism have been most highly developed. The first was founded in 1908 at the University of Missouri; others rapidly followed in other state universities; in 1912 the Pulitzer School was established at Columbia University; and in the same year the American Association of Teachers of Journalism was organized. By 1930 more than fifty American colleges and universities were offering full curricula in journalism, and hundreds of single courses were being given in other colleges and in high schools. The average annual number of graduates of schools of journalism in the years preceding 1932 approached 1000. Initial distrust has been largely overcome and until the depression which began in 1929 employment was easily found. The special training had largely justified itself.

In other countries the development was later but almost equally rapid. In Germany during the ten years after the World War schools of journalism were established in sixteen universities, two technical schools and five higher commercial schools; some, like the institute of journalism at Heidelberg, are notable for thoroughness. The University of London in 1919 opened a cycle of courses in journalism leading to a diploma in two years. The British National Union of Journalists at first distrustful of such schools has recently attempted to promote courses in journalism in various centers and has arranged university courses for the supplementary education of newspapermen already practising their profession. Australian universities have developed courses in journalism and the University of Queensland offers a special degree; several Canadian universities have schools like those of the United States; and there is a school of journalism at the University of Madras. In Italy one of the five sections of the Fascist Faculty of Political Sciences created at Perugia in 1928 is devoted to politics and journalism. The International Labour Office in 1928 found that special education, while still experimental, is making progress the world over.

Professional organization like professional training is as yet new and uneven. In numerous countries it received a strong impulse from the economic difficulties which journalists experienced after the World War. But there are parts of Europe in which journalism is as yet scarcely a full time profession; in Spain, for example, it is carried on largely by men in other callings who make it a spare time employment. Organization is impeded in other countries and especially in the United States by the fluidity of the profession, which finds recruits everywhere and whose members are highly migratory. The strongest professional organization numerically is the National Union of Journalists in Great Britain which was founded in 1907 and twenty years later numbered nearly half of the 10,000 working journalists of the country. It has followed a resolute trade union policy and is affiliated with the Printing and Kindred Trades Federation. Australia also has a strong Journalists' Association with a trade union character. In Germany the Reichsverband der Deutschen Presse divided into twenty regional unions had a membership of about 4400 in 1928 and has been able to do much in safeguarding the social and economic interests of the members. Organization in Italy has a considerable history,

culminating in the establishment in 1925 of the *Sindacato Nazionale Fascista dei Giornalisti*, partly political and partly trade union in character. The only comprehensive French organization is the *Syndicat des Journalistes*, numbering about 1200 members in 1927, which has a defensive economic aim. Various efforts have been made in American cities and in Canada to form professional bodies of a trade union character, but they have uniformly broken down. In Europe and Australia not a little has been accomplished in negotiating collective agreements on hours, salaries, holidays and the settlement of disputes; uniform contracts have sometimes been drawn up, and in Austria, Hungary, Italy and a few minor countries protective legislation has been obtained.

The opportunities and rewards of the newspaper profession, although uncertain and irregular, have manifestly risen in recent years. The great body of working journalists probably receive a little less than the general body of doctors and lawyers and a little more than the general body of teachers. In France in 1926 the *Syndicat des Journalistes* obtained a Paris agreement that journalists of two years' experience should receive not less than 1200 francs monthly. In Berlin a journalist may not be paid less than 440 marks a month. The highest pay is found in English speaking countries. In Great Britain in 1921 the National Union of Journalists negotiated a minimum weekly salary of £5/15 for its members working in cities of more than 250,000 people and £5/3 for members on dailies in towns of less than 100,000. Some London journalists have munificent incomes. In New South Wales and Victoria an agreement of 1924 fixed salaries for three categories of journalists, ranging from £5/19 weekly for juniors on evening metropolitan dailies to £10/12/6 for seniors on morning dailies. American reporters are in general given small salaries, but the best rewards run very high. In New York City in 1929 salaries to department heads and special writers reached \$500 a week, and in a typical city of 500,000 they were \$225 a week; noted syndicate writers make from \$40,000 to \$100,000 a year; one or two column writers make even more; "accounts executives" in advertising departments on metropolitan dailies make \$25,000 to \$75,000 a year; exceptional men in the fields of publicity and "comic strip" illustration may have an annual income between \$100,000 and \$150,000. The chance of obtaining an exceptional income and the fear that a minimum wage

would also become a standard wage have been among the chief forces militating against a trade union movement in America.

Journalism is notoriously a harassing and exhausting profession. Hours are long and on morning journals often extend to 2 or 3 a.m. The frequent changes in proprietorship, the numerous consolidations of newspapers in the United States, Great Britain and the dominions, the revolutionary upheavals in ideas on the continent have all made employment precarious; and the working life is short, many men being worn out at fifty. Press associations in France, Germany, Austria and Great Britain have made active efforts to deal with unemployment, but no such assistance is given in the United States. Provident institutions of a professional character are numerous in Europe; Great Britain, Germany, Italy, France and other countries possess mutual aid funds which furnish old age pensions and often unemployment and sickness benefits. They are unknown in Australia and the United States, although a number of large American papers have instituted insurance funds for their own employees and there are two American homes for aged journalists, one founded by the second James Gordon Bennett. Better provision for professional casualties is in general a crying need in the newspaper world.

For the dignity and repute of the profession nothing is more important than the organized promotion of good ethics and accuracy. There is in all countries a large field for improvement in this respect. The venality of much of the French press has been exposed in repeated scandals. It is matched in other Latin countries of Europe and South America. In the United States vulgarity, slovenliness and sensationalism are far greater evils. The most honest, sober and intellectually respectable journalism is that of Great Britain, where a long line of journalistic leaders have established traditions of continuing power. Professional standards there are watched over by the Institute of Journalists, founded in 1880 by royal charter and including newspaper proprietors as well as workers. The National Union of Journalists with its monthly organ the *Journalist* also gives effective attention to the subject. The United States has no similar body, although there is manifest room for a journalistic counterpart of the American Bar Association or Medical Association. State and national associations of newspaper publishers, maintained for many years, have confined themselves mainly to business ob-

jects. The American Society of Newspaper Editors founded in 1922 had a membership two years later of 174 editors in cities of 50,000 or more, but it lacks scope and authority. At its second meeting in 1923 a code of ethics dealing with independence, truthfulness, accuracy, impartiality and decency was adopted, and although it had more resonance than practical value it marked a beginning. In 1912 the first National Newspaper Conference, addressed by many leaders, was held at the University of Wisconsin. In 1914 the second conference met at the University of Kansas and others met subsequently. State press associations have adopted codes of ethics. One valuable force for honesty in American business offices is the Audit Bureau of Circulations which carefully audits publishers' statements of circulation and issues standardized and accurate statistics for the benefit of advertisers. Bills introduced in state legislatures to license journalists in the same fashion as doctors and lawyers have invariably failed. Several newspapers, notably the New York *World* in its last years, have set up bureaus of accuracy and fair play. The old evils of bribe taking and blackmailing have largely disappeared in the United States. But newspapers are frequently unjust to individuals and news of libel suits is tacitly but systematically suppressed in most newspaper offices. Many journals color or suppress news to suit their advertisers; there is much mendacity, distortion and sensationalism in weaker parts of the press and particularly among the "tabloids" or small size dailies; and a subcommission of the New York State Crime Commission declared in 1927 that many newspapers made heroes of criminals, tried cases in their columns and influenced adolescents to emulate crooks and gangsters.

As a profession journalism the world over suffers from the brevity of its history and a consequent lack of firm traditions; from the process continued generation after generation of annexing new bodies of readers by establishing journals which reach out to the ignorant, illiterate and vulgar minded; from the frequent difficulty of reconciling the objects of the editorial departments with those of the counting room; and from the great recent tendency in many countries toward consolidating rival newspapers, suppressing individuality of tone and making the surviving journals commercial in character. A constant struggle is required to maintain or elevate journalistic standards. In Great Britain and the United States, the two countries where

journalism has counted for most, persistent complaints of deterioration have been heard in recent years. Yet materially the newspaper has had and is still having a prodigious development. Great strides have been made since 1900 in developing a specialized education, in bringing into existence professional organizations of a trade union character and in improving both the economic status and the general repute of the profession. It has more esprit de corps than before, manifest in local, national and even world associations; it presents a steadily widening range of openings for individual talent; in some directions it is more progressive than heretofore. It furnishes less of strong personal leadership and striking individual talent than it did in the nineteenth century, but as a routine occupation for a great mass of workers it is slowly rising to better levels and offering increased attractions.

ALLAN NEVINS

*See:* PRESS, PROPAGANDA; PUBLICITY; PUBLIC OPINION; CENSORSHIP, FREEDOM OF SPEECH AND OF THE PRESS; PROFESSIONS; PROFESSIONAL ETHICS.

*Consult:* International Labour Office, "Conditions of Work and Life of Journalists," *Studies and Reports*, ser. L, no. 2 (Geneva 1928); Flint, L. N., *The Conscience of the Newspaper* (New York 1925); Rogers, Charles E., *Journalistic Vocations* (New York 1931); Bleyer, Willard G., *Main Currents in the History of American Journalism* (Boston 1927); Bent, Silas, *Ballyhoo, the Voice of the Press* (New York 1927); Carr, C. F., and Stevens, F. E., *Modern Journalism* (London 1931); Bomer, Karl, *Bibliographisches Handbuch der Zeitungswissenschaft* (Leipzig 1929); Bourdon, G., and others, *Le journalisme d'aujourd'hui* (Paris 1931); Botscharow, J., *Die Entwicklungswege der russischen Presse, 1621-1928* (Moscow 1928).

JOURNEYMEN'S SOCIETIES were created in the period of the decay of the mediaeval craft guild by artisans (*valets*, *varlets* or *compagnons* in France; *Gesellen* in Germany; journeymen or yeomen in England) who had completed their apprenticeship but had not attained mastership. In theory at least the mediaeval guild had united journeymen and masters, treating them not as fixed classes but as two different stages in the development of any competent artisan. But with the first appearance of capitalism and the drive toward the attainment of a monopoly of the sources of private gain the masters deprived the journeymen of representation in the guild assemblies. In the cloth industry, which because of its technique and commercial position was the first to assume a capitalistic character, the differentiation into classes began not later than the

fourteenth century. By the sixteenth century a permanent class of journeymen had been created throughout western Europe. Various devices were contrived by the masters and through them by the government to place the mastership virtually beyond the reach of journeymen. The period of apprenticeship was extended; according to the provisions of the English Statute of Artificers (5 Eliz., c. 4), for instance, it was fixed at seven years. Dues and entrance fees were increased and more costly gifts and banquets demanded of candidates for the mastership. The masterpiece, which the prospective master was obliged to furnish everywhere on the continent as well as in several crafts in England, became a virtually prohibitive requirement, as it was made progressively more costly and difficult to achieve. The journeyman might with difficulty rise to the intermediate rank of small master. But the latter class was subjected to the same treatment, until by the seventeenth century it consisted almost entirely of wage earners. The masters of the *corps de métier* in France and of the livery companies in England came to form closed oligarchies tending to bequeath their jealously guarded monopolies from father to son. Sometimes as a direct result of their elimination from all influence in the guild, sometimes, as in Paris in 1530, by special decree, the journeymen—now unhonored *gens mécaniques*—were ousted from the government of the city. The maltreatment of them occasionally took a violent form, as at Chester in 1358; and there is evidence that they were persecuted by law throughout Germany and at Paris, Châlons, Rouen, Amiens and Troyes in France.

In self-defense the journeymen began to form independent associations with their own chiefs and treasuries. The early *compagnonnages* in France, particularly those in the southwest, had a religious, charitable character, like the *Bruderschaften*, which were the first *Gesellenverbände* in Germany. In the fifteenth century fraternities of journeymen or yeoman cordwainers, saddlers, tailors and other craftsmen were founded in London and later in other English cities. Through these organizations the journeymen were able to defend their position in the companies, an aim which they pursued first in cooperation with the small masters and then independently. From 1434 the Blacksmith Company in London was forced to accept the presence in its midst of a special organization of journeymen.

The journeymen's societies soon undertook the surveillance of handicraft. Such superin-

tendence had been initiated in Paris in 1406, when the masters filed a complaint that every journeyman arriving in the city had to regale the other workers in a roisterous holiday at his expense. Especially in Germany and France the working population was largely mobile. The idea that the workman must travel in order to perfect his moral education and his professional training was deeply embedded; if he were a mason, for instance, he had to see the famous monuments. The obligation to travel, the *Wanderschaft*, seems to have been first introduced in Germany, probably in the fourteenth century; in that country the period sometimes lasted as long as five years. The *tour de France*, as the same requirement was called in France, was still practised in the middle of the nineteenth century, as evinced by Agricol Perdiguier's *Le livre du compagnonnage* (1839) and George Sand's *Le compagnon du tour de France* (1840). In each town that he visited the young journeyman had to register at the *Herberge* of his craft—in France the innkeeper's wife was called the mother of the journeymen—and then to present the password to the secretary of the society, who provided him with work or, if none was available, with funds to continue his travels (*viaticum*).

Out of these practises there evolved a complex and, to outsiders, mysterious ritual. Assumed names, cryptic gestures and words, the wearing of colored ribbons and the carrying of canes provided means of identification. Elaborate festivals were held; a system of dues, fees and fines was established; "secret" correspondence was conducted between the various local branches of the craft. The ceremony of initiating new members under pledge of secrecy represented a naive imitation of the church cult. Through these rites a connection has been traced between the journeymen's society and the origins of Freemasonry. The name is thought to have derived from a fraternity of *freie Maurer*; according to one theory the *freie Maurer* founded in the thirteenth century at the Cathedral of Strasbourg constituted the first *Bauhütte*, or lodge, of the order. The myths of the French societies are strongly suggestive of a link with Freemasonry. Divided into three large groups or *devoirs* on the basis of their legends and professed genealogy, the *compagnonnages* claimed descent from the Order of Templars or even more remotely from the architects of the Temple of Solomon. The most likely hypothesis is that the intellectual societies created in England and

Scotland in all probability at the end of the seventeenth century took over the rites and symbols of the journeymen builders together with the name of Freemasons.

Because of the secrecy involved the symbolism of the societies inevitably aroused suspicion and led to charges of sacrilege. In 1655 after information had been furnished by spies of the *Confrérie du Saint-Sacrement*, a society of the devout which served the interests of the employers, the Sorbonne condemned the French *compagnonnages* as impious. The political authorities pursued them also as disturbers of the peace—an accusation not without some foundation since the members of the rival *devoirs* were constantly squabbling and sometimes engaged in sanguinary battles.

The picturesqueness of the journeymen's societies has tended to divert attention from their essential purpose. Primarily they were organs of workers' defense against nascent capitalism. Through their hold over the traveling worker upon his arrival in town the societies could attempt to monopolize the placement of workers and to exercise an indirect control of the labor market. When their demands were refused, they withheld a supply of workers from the masters and sometimes even from an entire city. Similarly, those workmen were banned who disobeyed the orders of the group, failed to pay their assessments or agreed to work at bargain rates. The societies, in short, conducted an organized persecution of scabs. The masters found themselves at odds with the societies if they exceeded the number of apprentices authorized by the rules of the trade, thus diminishing the number of paid workmen, or if they reduced wages, nominal or in "bread, meat and drink." The complaint of the printers of Lyons in 1539 included both charges; the cloth workers of London petitioned against the first action in 1568, 1574 and 1577, on the last occasion eliciting the reply from the Court of Assistants—the title of the oligarchical councils of the English guilds—that "they must come to their work at such time as they ought to do by the ordynance of this house, and to do their work justly and truly as they ought to do, and to be content with such reasonable fare." A third object of protest on the part of the societies was the excessive length of the working day.

These conflicts frequently ended in strikes, called variously monopoly, *taquehan*, *tric*, *cabale*. During the thirteenth century the cloth workers struck at Rouen, Provins and Beauvais.

The great printers' strike which broke out at Lyons in 1539, ten years after the general rebellion of the *secte artisanne* of the same city, spread to Paris in 1541 and was finally settled only in 1571. These strikers had a strike fund and an almost military type of organization and the strike was punctuated with outbursts of violence. It was against such activities as well as for religious reasons that the *Confrérie du Saint-Sacrement* organized devout, docile workmen into *bons compagnonnages*, which became genuine strike breaking societies. In general government was at all times and in all places hostile to journeymen combinations. The Imperial Decree of 1731 provoked by the strike of the Augsburg shoemakers was one of innumerable attempts at suppression made by the German authorities. In England immediately after Elizabeth's comprehensive statute on industrial regulation journeymen were condemned for having "unlawfully consulted and assembled together from their master's service." In France journeymen combinations were prohibited in 1539 by the royal decree of Villers-Cotterets, which was many times reissued under the *ancien régime*. During the revolution the Law of Chapelier of 1791, making it a crime for citizens of the same profession and for any workmen to organize or to attempt to regulate their alleged interests, was dictated by fear of journeymen's strikes, particularly in the food industry and builders' and carpenters' trades. All the laws in France against combination down to 1864 and against association down to 1884 may be connected with a similar fear.

Explicable partly by the emergence of large scale industry, partly by the universalization of the *Wanderpflicht*, a general federative movement linking up local societies into powerful organizations set in sometime before 1700 and lasted until the end of the eighteenth century. This provides at least one explanation for the survival of the societies in the face of the intermittent hostility which they aroused. In Germany, where the *Wanderpflicht* had become established earliest, great federations spreading a network sometimes over the entire nation had been created in the sixteenth and seventeenth centuries. Letters patent of 1777 state that throughout France the paper makers, who were particularly susceptible to the movement because of the scattered distribution of the paper mills along the waterways, "have united in a general association by means of which they control the industry as they please." In eighteenth century

England on the eve of the modern trade union movement the journeymen hat makers had a widely ramified organization. The London Felt-makers' Company consisting of the master employers registered a denunciation in 1777 of a journeymen hat makers' combination, "called a Congress," which made by-laws for the whole trade and had a system of fines and sanctions. The comparatively veiled activities of the hatters during the century eventuated in 1798 in the formation of the Journeymen Hatters' Trade Union of Great Britain and Ireland, which is still in existence. Sometimes the federation exceeded state limits; for instance, the hat makers of Brussels were in correspondence with their fellow craftsmen in French towns.

After temporarily subsiding during the revolution the French journeymen's societies revived and gave the imperial administration as well as the Restoration government more than one occasion for concern. But the progressive development of the factory system and of machine technique, the emergence of specialization, standardization rendering the *Wanderschaft* superfluous, as well as internal weaknesses arising from exclusivism and feuds with rival societies, made journeymen's societies increasingly insignificant. Since the advent of the trade unions they have lost all influence in France as in England, although traces of them are to be found even today. Associations formed among the workers of various trades in America toward the end of the eighteenth century took the name of journeymen's societies. The primary object of most of these early American societies was mutual aid and benefit, but during the first half of the nineteenth century many American journeymen's societies organized strikes. In Germany *Gesellenvereine* still exist, for instance, among the bakers, while the journeymen's committees, *Innungen* and craft guilds recognized by the *Gewerbeordnung* of 1929 represent vestiges of the old institution. The Catholic *Gesellenvereine*, founded at Elberfeld in 1845 and at Cologne in 1853 by Adolf Kolping, "father of the journeymen," reckon more than 300,000 members and are in correspondence with a Kolping Society of America.

Admitting only able and conscientious artisans, the journeymen's societies set for their members a high standard of workmanship as well as of moral conduct. They improved and diffused the techniques of industry. In general they were animated by a lively fraternal spirit which found expression not only in festivals but

in a generous expenditure from their treasuries for purposes of mutual aid and in the establishment of funds for non-interest bearing loans. They rather than the craft guilds are to be regarded as the real forerunners of the trade unions. While their protests against the employers were comparatively sporadic, they occupied a position in the defense of labor for which no other organization before the trade unions competed.

HENRI HAUSER

See: GUILDS; APPRENTICESHIP; HANDICRAFT; TRADE UNIONS, LABOR.

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JOVELLANOS, GASPARD MELCHOR DE (1744-1811), Spanish statesman, economist and educator. Jovellanos studied philosophy, theology and law at the universities of Oviedo, Ávila and Alcalá. In 1767 he was appointed magistrate in Seville and eleven years later was transferred to Madrid. He served as minister of justice under Charles IV in the year 1797-98. Because of his political affiliations he was twice exiled. He refused the Ministry of the Interior which was offered him after the French invasion by Joseph Bonaparte and became a member of the Junta Central for Asturias, collaborating actively in the work preparatory to the Cortes of Cadiz. In his *Memoria en que se rebaten las calumnias . . . contra los individuos de la junta central* (2 vols., La Coruña 1811) he propounds his conception of

the ideal state: a limited constitutional monarchy in which the executive, legislative and judicial powers are clearly separated.

Jovellanos is identified in general with the group of enlightened Spanish statesmen of the eighteenth century who sought to improve the economic position of Spain. He was distinguished for his encyclopaedic learning and wrote poetry and drama as well as innumerable treatises on economic and political questions. Although he accepted in general the theses of the liberal school of economists he frequently offered opinions in contradiction to their teachings. His chief work in this field is his famous *Informe . . . en el expediente de la ley agraria* (Madrid 1795, new ed. Gijón 1891), a report made to the Supreme Council of Castile for the Sociedad Económica de Madrid. The document, still a classic in Spain, contains a clear and methodical exposition of the obstacles to Spanish agricultural progress, obstacles including not only the nature of the soil and adverse climatic conditions but also existing law and custom. To remedy the situation he advocated irrigation and improved roads, the break up, for sale or lease, of the commons and waste lands, the abrogation of the privileges of the Mesta and the education of the peasants. He favored free trade in grain within the country but objected to its export and believed that its importation should be limited. In *Informe que dió á la junta de comercio y moneda sobre el libre ejercicio de las artes* (Madrid 1785) Jovellanos urged the abolition of the craft guilds, maintaining, however, that some regulation of the crafts was necessary.

Conscious of the needs of practical and technical education, he founded the still existing Real Instituto Astoriano in Gijón and organized the curriculum, which in addition to mineralogy, mathematics, physics and the nautical sciences included courses in modern languages, history and geography. Jovellanos himself wrote a number of the textbooks, covering a variety of subjects. His *Reglamento* (Salamanca 1790) for the Imperial College of Calatrava outlined the most complete plan of studies to be found at that time in Europe. Jovellanos held that with the extension of the suffrage popular education became a social necessity and that the government must provide it.

C. BERNALDO DE QUIRÓS

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*obra* (Madrid 1911); Juderías y Loyot, J., *Don Gaspar Melchor de Jovellanos* (Madrid 1913); Artiñano y de Galdácano, G. de, *Jovellanos y su España* (Madrid 1913); Yaben Yaben, H., *Juicio crítico de las doctrinas de Jovellanos en lo referente á las ciencias morales y políticas* (Madrid 1913); Villar Grangel, D., *Jovellanos y la reforma agraria* (2nd ed. Madrid 1925); Bareño, F., *Ideas pedagógicas de Jovellanos* (Gijón 1910); Mérimée, E., "Études sur la littérature espagnole au XIX<sup>e</sup> siècle: Jovellanos" in *Revue hispanique*, vol. i (1894) 34-68. For a complete bibliography of works by and about Jovellanos consult Somoza de Montorsín, J., *Inventario de un jovellanista* (Madrid 1901).

JOWETT, BENJAMIN (1817-93), English scholar and educational leader. Jowett was tutor of Balliol College, Oxford, for twenty-eight years and master for another twenty-three. His fundamental educational principles were sympathetic intimacy between tutor and pupil, strict but unmechanical discipline, examinations which would be selective of ability and acceptance of the obligations of corporate life. He urged the opening of all doors to poor students of intellectual promise and worked for the extension of secondary and adult education. His devotion to Balliol was unsparring and his labors for its improvement endless: he enlarged buildings, spending much of his own money on the college; encouraged athletics; fostered the teaching of physical science; inaugurated intercollegiate lectures; reduced expenses for poorer men. During four years as vice chancellor of the university (1882-86) he safeguarded the beauties of the parks, drained the floods, accelerated the production of the Oxford *New English Dictionary*, encouraged oriental studies and the drama.

Jowett believed strongly in the vitality of classical culture; and his translations of Plato (1871), Thucydides (1881) and the *Politics* of Aristotle (1885) are classics in themselves. His theological writings, however, exposed him to suspicion of heresy. Although he remained unshaken in the innermost chamber of personal faith he was a rationalist in criticism of formulated dogmas. He held that the perfect liturgy will contain no creeds and that the spirit of Christianity is not always identical with the letter of the Bible. Such views, which were first apparent in his edition of the epistles of St. Paul (. . . *Epistles to the Thessalonians, Galatians, Romans*, 2 vols., London 1855; 2nd ed. 1859), were very distasteful to orthodox opinion, but established a place for him among the leaders in modern Biblical interpretation.

MICHAEL E. SADLER

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JUÁREZ, BENITO PABLO (1806-72), Mexican statesman. Juárez, a pure blooded Indian of peasant stock, was educated in the law. In 1855 an uprising of mestizo and provincial interests against the church and the great landowners expelled the dictator Santa Anna and initiated a great Mexican reform movement, which Juárez supported; he became minister of justice and chief justice and when intrigues brought about the downfall of the reform government proclaimed himself acting president. He achieved victory in the bloody War of the Reform from 1858 to 1861 and expelled the papal nuncio and other ecclesiastics who resisted his decrees. The clericals and monarchists sought foreign support for their cause, but Juárez met the joint military intervention of Great Britain, France and Spain in 1861-62—ostensibly for the purpose of collecting debts and reparations for damages suffered by their nationals in the civil conflicts—with dignified and prudent negotiations. When the French remained behind to wage a war of conquest in the clerical interest and to establish a Hapsburg empire under Maximilian, he displayed a courageous and untiring resistance, which contributed toward a great development of the national consciousness. The initial measure of the reform was the so-called Juárez Law of 1855, which practically suppressed the military and ecclesiastical tribunals as class courts. More anticlerical legislation followed and a national convention established the liberal, federal constitution of 1857, the basic document, in spite of all vicissitudes, of Mexican political life down to 1917. During the civil war Juárez promulgated a comprehensive group of reform laws, which in part confirmed previous legislation and which together with other measures confiscated the immense landed holdings of the church, dissolved the monasteries and convents, proclaimed the separation of church and state, secularized the cemeteries and made marriage a civil contract. His government also enacted measures contemplating the creation of a class of small landowners. Upon the downfall of the empire Juárez reestablished the federal and republican regime; he was elected constitutional president in 1867 and reelected in 1871. Al-

though his administration showed less concern with implanting a genuinely popular and constitutional government than with its continuance in power, he negotiated advantageous treaties, strove to keep the military in their place and gradually restored a considerable degree of civil order. Today he is revered by most Mexicans as their greatest national hero and the champion of their popular rights. Some, however, have condemned the rather onerous conditions which he accepted in 1859 as the price of recognition by the United States and many have questioned the wisdom of the occasionally radical application of the principles of liberalism and individualism, as developed in Europe and the United States, to Mexico, with its large aboriginal population and its religious and collective traditions.

CLARENCE H. HARING

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JUBAINVILLE, HENRI D'ARBOIS DE (1827-1910), French historian, philologist and jurist. D'Arbois de Jubainville was the founder of Celtic studies in France. Archivist at Troyes from 1852 to 1880, he published numerous works on the archives and the archaeology of the Aube and a seven-volume history on the counts of Champagne from the fifth to the fourteenth century. In order that he might understand the origins of France he learned the Celtic languages and became a philologist and historian of antiquity. In this new domain he attracted universal attention with a great work, *Les premiers habitants de l'Europe* (Paris 1877; 2nd enlarged ed., 2 vols., 1889-94). The chair of Celtic was created for him at the Collège de France in 1882, and he became a member of the French Institute in 1884. He was the author of many articles on Celtic philology and published a *Cours de littérature celtique* (12 vols., Paris 1883-1902), of



which seven volumes were composed by him, the others by his pupils.

Since his youth d'Arbois de Jubainville had been interested in the history of law. He had indeed begun by studying law at the École des Chartes. He now returned to the law by way of philology and published a famous work, *Recherches sur l'origine de la propriété foncière et des noms de lieux habités en France* (Paris 1890). Thereafter he occupied himself almost exclusively with Celtic law, which he alone was equipped to study at its sources since he was both Celtist and jurist. He devoted particular attention to Irish law, especially the *Senchus Mór*. His "Études sur le droit celtique" (vols. vii-viii of *Cours de littérature celtique*) and his *La famille celtique* (Paris 1905) are among his most important works in Celtic law. As historian he dissipated many of the fantasies concerning the ancient Gauls, and as jurist he put the study of Celtic law upon a scientific basis.

PAUL COLLINET

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**JUDAISM.** Nineteenth century historians of religion, especially Christian historians, have used the term Judaism to denote the religion of the Jews since the time of Ezra (c. 444 B.C.) in contrast to the pre-exilic religion, which they called the religion of Israel. This attitude was prompted primarily by the belief that postexilic Judaism was a retrogression, due to foreign influences, from the teachings of the prophets and that the true prophetic tradition was continued in the religion of Christianity. Closer study of the sources has revealed more and more clearly, however, that Judaism is but a continued development of the teachings of the prophets. Like every other religion Judaism passed through a certain historical evolution, throwing off old elements and acquiring new ones. Foreign influences were always operating—from the earliest influences of Egypt, Babylonia, Assyria and Persia through the Hellenistic period, the contacts with Arab culture in the Middle Ages, the humanistic tradition of the Renaissance down to the influence of Protestantism on the development of reform Judaism. One or another aspect or tendency may have been especially stressed or become dominant, but until the close of the

eighteenth century there was never a radical break with the main tradition and characteristic form which Judaism assumed during the period from Ezra to Akiba (c. 135 A.D.). Rather it was constantly reinterpreted in the course of centuries and adhered to with astonishing fidelity.

The most primitive form of the religion of Israel was developed probably during the nomad period. It was characterized by a belief in demonic powers and spirits, by distinctions between clean and unclean animals and by adherence to certain death customs. It already contained, however, the germs of the ethical ideas later developed by Moses and the prophets, and monolatry rather than polytheism prevailed. With the entry of the Hebrews into Canaan and their development as an agricultural people came also a development of a cultus marked by sacrifices, festivals and sanctuaries. This period is also marked by a struggle between the religion of Yahweh and the continued attempts at incorporating the worship of local deities.

It was in connection with this struggle that there appeared in Israel a group of men unique in the history of the ancient world who brought the development of the Hebrew religion to its highest point. The prophets were men of diverse social classes whose authority was based on the fact that they were responsible to their God alone and who were independent and courageous enough to proclaim what had been revealed to them, even though their prophecies announced serious disasters involving the ruin of the whole nation or the destruction of the temple. Their teaching was marked by a pure ethical monotheism and universalism, a passion for social justice and a repudiation of the sacrificial cult as the most distinctive mark of the Hebrew religion. But the prophets were never able to establish the complete supremacy of their ideas and the cruder forms of popular belief persisted side by side with these more spiritualized religious and ethical precepts.

After the Babylonian exile the leadership of the people became hereditary in the priestly house of Zadok. By this time too the Law had been reduced to writing and through the efforts of Ezra and the traditional Men of the Great Synagogue had been restored as the most essential factor in the Hebrew religion. This Mosaic law circumscribed the activities of the priestly class and became the most effective means of making the teachings of the prophets the inheritance of the individual. The task of furthering this usage of the Torah (Law) was assumed by

a new order of scribes, who came from the people and who by their personal qualifications proved their fitness for this high calling. The prestige of the scribes grew especially during the period when the hereditary priesthood temporized with the inroads of Hellenism. The scribes assumed the leadership of the middle class and peasantry in a successful fight for the preservation of their national and religious integrity. When a new priestly class developed which gathered about it the Sadducee aristocracy and founded a new dynasty, they were challenged by the pietists of the middle class, now known as Pharisees, who continued the tradition of the scribes. The Pharisees set up an ideal based on the democratic belief in universal priesthood and on the conviction that man's entire life and activity should be permeated by a sense of piety. It was at this time too that the concept of an oral tradition in addition to the written law came to the fore. The Pharisees, in opposition to the Sadducees, affirmed the divine and binding character of the oral law as developed by the scribes and the rabbis. Although this doctrine was at first vehemently contested by the various sects yet it was this doctrine more than anything else that preserved the vitality of the Torah and made possible the development of Jewish life. The Pharisaic conception was the only one that was able to maintain itself after the fall of the Jewish state and the destruction of the temple. The teachers of the Torah became henceforth the unchallenged leaders of the people.

The Pharisees, later known as tana'im and then as amora'im, were likewise men of diverse social classes; they were kept together and enabled to exert their influence over the people by their common work and ideal. It was they who transmitted and developed the oral tradition and it was their doctrine and their opinions that became decisive for the Jews of the whole world. Their decisions determined the laws, customs and religious ceremonies of Jewry. These, however, were never promulgated in either dogmatic or mandatory form; they were accompanied by statements of the controversies and discussions which their formulation had required, in order that later generations might be able adequately to understand the mind and will of their predecessors.

The opinions and decisions of the tana'im and amora'im are contained in what has come to be known as the Talmud, a vast encyclopaedic storehouse of legal opinions, controversies and

decisions; of ethical precepts and maxims; and of legends, history and traditions, which received its definite written form about the year 500. Only a secondary place was given in the Talmud to the treatment of religious creed, for in this sphere considerable latitude was allowed. Chief attention was directed to the practices which were to regulate the legal and ritual life of the Jews. With the exception of the Karaites, who, beginning in the eighth century, formed a separate sect and refused to recognize the validity of the oral tradition, all the Jews willingly submitted to the authority of the Talmud. The initial success of Karaism (today it has about 12,000 adherents) was of short duration. The whole movement soon became culturally petrified. The principles of rabbinical Judaism, on the other hand, made possible a continuous cultural development. The Talmud met with recognition but never with blind worship; no matter how strong the bonds of tradition, alert and eager commentators and codifiers always started afresh and by their work tried to do justice to the changes in social and cultural conditions. Because there were no rigid and absolutely binding rules of interpretation and no central or final authority, each commentator decided on the basis of his personal convictions how much weight to give to the work of his predecessors. In most cases, however, the commentators endeavored to find substantiation for their views in the Bible and the Talmud or in the work of a previous rabbi; it was seldom that they dared to contradict an uncontested opinion in the older literature. Codification of the vast material soon proved to be necessary, but even the *Mishna torah* of Moses Maimonides (1135-1204), which is distinguished for its completeness and logical unity, did not meet with general approval. The *Shulchan aruch* of Joseph Karo (1488-1575) also aroused great opposition at first, but it was gradually accepted after the glosses of Moses Isserles (died 1572) had been incorporated into it and after it had been further modified and reinterpreted by numerous commentators. In orthodox circles the *Shulchan aruch* thus amended still enjoys decisive authority. The critical attitude toward it which Chassidism originally assumed was soon abandoned and its authority was submissively acknowledged.

Traditional Judaism as developed in the Talmud, the rabbinical literature and codes of the succeeding ages came to regulate the entire life of the Jew. Judaism made no distinct cleavage

between the sacred and secular aspects of life. Problems of morality, family life, hygiene, dietetics, business relations, sexual life, education and dress as well as of the more distinctly religious elements of ritual were encompassed within the range of rabbinic authority. All the legal minutiae were created by the rabbis as a "fence around the Law" to assure the preservation of the essential features of Judaism. Attacks have been made on this legalism of rabbinic Judaism, but it was this body of doctrine that supplied the independent Jewish communities scattered throughout the world with what Heine called a "portable fatherland," with a common possession which gave to the entire Jewry a common consciousness and a stamp of unity. This traditional literature of the Jews was the source both of the cultural life from which they derived their spiritual unity and of their continued cultural and spiritual progress. The system performed a further service for Judaism in identifying religion with the earthly life and in general removing the religious struggles within Judaism from the realm of dogma to that of the concrete, thus liberating human energy for human activity.

Side by side with the development of rabbinic Judaism there developed a doctrine of mysticism known as the Kabbala. Indications of these mystic strains in Judaism are already evident in the Talmud and in the Midrashic literature. The first important book of the Kabbala was the *Sefer yetzirah* (Book of creation), which became current about the ninth century. Kabbalistic literature continued to be developed among the Jews of France and Germany and in the sixteenth century flourished especially in Palestine, where it was cultivated by the schools of Moses Cordovero (1522-70) and Isaac Luria (1535-72). The *Zohar*, a work of unknown authorship, which became current in the fourteenth century, came to be considered as the most sacred of Kabbalistic writings. The Kabbala was developed along two lines. On the one hand it flourished as a metaphysical system concerned with the doctrine of divine emanation, with the concept of God as the Infinite (*En-Sof*), with the ten intermediaries, or *sefirot*, of God and with the doctrine of transmigration of souls (*gilgul*). Alongside of this speculative mysticism there developed a practical Kabbala which stressed the sinfulness of human nature, built up a system of demonology and magic, encouraged asceticism and was above all concerned with Messianism and the problem of the salvation of

Israel. It was this Messianic strain which inspired the later activities of Sabbatai Zevi and the Frankist sects. In a very much modified form the Kabbala was also one of the sources of the movement of Chassidism (*q.v.*). Related to the Kabbala was the didactic literature (*musar*) which grew up to satisfy the more emotional needs of the masses. The *Sefer chassidim* of Samuel Chassid (1115-80) and his son Judah Chassid (1150-1217) is the most typical example of this aspect of Judaism. It is a mixture of noble ethical principles with popular superstitions concerning evil spirits and demons. Generally speaking, both of these currents served as reactions to overdeveloped rationalism and as a correction for the overassertion of legalism. They had distinct social roots also, in that their appeal was greatest among the more humble classes.

The religious institutions of the Jews varied with the different periods of development. The centralization of the cultus at Jerusalem during the period of the first kingdom resulted in the displacement of the old local sanctuaries by the temple in Jerusalem. The temple became the central religious institution of Jewish life where all the important rites were to be performed. During the Babylonian exile the Jews preserved their religious traditions in assemblies where the scriptures were interpreted, the psalms or other religious poems recited, confessions made and prayers said either collectively or individually. This gave rise to a new religious practise, the prayer service, which from a casual and purely exilic device became a permanent practise recognized in Palestine and one of the most important innovations in the field of religion. There was brought into being a form of religious service which was independent of consecrated places, buildings, objects, classes and persons and which requires only the will of a group.

These assemblies knew no distinctions of rank; all their members no matter whether they were natives or strangers were treated as equals; even women were at first not excluded from the performance of certain functions. With these congregations the Jews created an extremely mobile type of institution. The synagogues, which were centers both of religious worship and of learning, accompanied the Jews in all their migrations, springing up spontaneously everywhere. It is from Judaism that its two offshoots, Christianity and Islam, borrowed this religious institution.

The prayer service acquired such an impor-

tance in Jewish life that it found its way also into the temple at Jerusalem; and when the temple was destroyed for the second time, the synagogue, this "sanctum in miniature," was sufficiently popular to offer in its devotional practices a substitute for sacrificial services. The victory of the secular synagogue was by this time complete, despite the few survivals of temple customs and the slight privileges which were granted "for the sake of peace" to the descendants of the old priests. The emergence of a class of professional readers was caused not by a desire to create a consecrated caste but by the technical needs of recitation. Even today all synagogal functions are open to every member of the community. The difference between laymen and ministers which characterized the synagogue in the last century marks a definitely backward step.

Evidence of proselytizing efforts on the part of Jews is found as early as the Exile period. During the Hellenistic period Jewish missionary activity was carried on through the Jewish literature in Greek, through the synagogue with its readings from the Bible and through personal influence, especially of the Jewish merchants. Conversion to Judaism was quite frequent during the early years of the common era. After the triumph of Christianity Jewish proselytizing was carried on chiefly in non-Christian countries, like Arabia and Abyssinia. The conversion of the Chazars is the most important instance of mass conversion to Judaism. A more subtle form of proselytizing is evidenced in the Judaizing sects of Protestantism and those of Russia. It was not until the time of Moses Mendelssohn that the doctrine was formulated whereby no one not born into the Jewish religion should be converted to it.

An attempt to construct a generalized statement of the leading social and ethical doctrines of Judaism is made difficult by the fact that the Bible and rabbinic literature abound in conflicting statements and opinions which can be used to support contradictory views on the same problems. The difficulty is intensified also by the absence of any central authority or court of last resort in the formulation and interpretation of religious problems. Certain leading principles have, however, been fairly constant; and in instances where earlier conflict existed one or the other opinion has come to be stressed and accepted under the influence of external conditions and the historical experiences of the Jewish people.

The basic idea of Judaism is its belief in revelation, that God revealed Himself to the people of Israel, that He disclosed to them His nature and will and that He made a covenant with them. The idea of God in Judaism is a direct continuation of the Mosaic concept of Yahweh as a single spiritual God of whom nothing but Being is predicated, and who is never worshiped in the form of images or statues. This doctrine precluded all polytheism, all worship of female deities with its consequent lasciviousness, all worship of animals and of the heavenly bodies. It forbade the worship of nature with its good and evil forces. It forbade child sacrifice, prohibited every form of magic and witchcraft and rejected ancestor worship and ancestor incantations.

The major prophets conceived of Yahweh as perfect and holy, as the principle of all spirituality; that is, as the one and only God. They dedicated all their efforts to supporting this conception and to eliminating all anthropomorphic elements from Judaism. There was thus established a solid foundation for the monistic conception of God and for the repudiation of all anthropomorphism which was able to withstand the force of foreign influences during the period of the Exile. No definite attitude was ever adopted concerning the question of angels and demons. The scribes paid little attention to them; following the old Biblical writers they regarded them simply as "messengers" and "instruments" of God. In the popular imagination, on the other hand, these beings grew in number and significance because of Babylonian and Persian influences. They were regarded by the people after the fashion of the retinues of earthly kings at court although still as subordinate creatures of God, whose unity was not thereby in the least impugned.

In Greek culture Judaism for the first time came into contact with a systematic and philosophic doctrine of God. The antithesis between immanence and transcendence, the dualism between God and the world, was most keenly perceived by the Greeks, who solved the difficulties involved by assuming the concept of a mediator. Greek culture gave rise to Philo's doctrine of the Logos—the Son of God—and also to the gnostic conception of the demiurge—God the Creator who, because He is an emanation from the perfect, infinite and fathomless God, is able to bring about a union with the material world. These doctrines of the mediator and the Son of God created an impassable gulf

between Christianity and Judaism. Gnosis was of course revived and further developed during the Middle Ages, especially in the Kabbalistic tradition, when the belief in God seemed too abstract and the way from God to man too long and difficult. The gnostic solution was preceded by a philosophic examination of the problem of the divine attributes, finally solved by Moses Maimonides. In order to preserve the idea of the strict singleness and unity of God, Maimonides resorted to the assumption that only negative propositions can be predicated of God and that even these negations can have only a figurative meaning. It is true that the philosophy of Maimonides and the study of philosophy in general met with strong opposition in rabbinical circles and that the Kabbala with its appeal to the human imagination became highly popular. But the doctrine of a God devoid of all plurality or corporeality remained henceforth dominant and incontestable.

This concept of God always carried with it the germ of universality. The prophets especially preached such a universalism. They proclaimed their God as the judge over all the nations in the whole earth; alien nations are instruments in God's hand for meting out punishment to Israel. The universal significance of the concepts "world" and "humanity" became much clearer during and after the Exile and Judaism was transformed from a community based upon blood into a confession. National ideals were preserved but this did not interfere with the belief in the ultimate union of all humanity, as is strikingly illustrated by the attempts to interpret certain of the Jewish religious ceremonies as symbolizing a time when all nations will be united and equal; for example, the seventy sacrifices performed on the Feast of Tabernacles were interpreted as representing the seventy nations of the globe.

Cult and rites were without significance in the religion of Moses; the Decalogue does not mention them. Fanes, altars and places of pilgrimage did not exist and the prophets radically questioned the existence of a sacrificial cult during the desert period. But in Canaan the conquerors found a widely ramified and extensive cult of fertility deities, whose favors were sought after by all kinds of gifts, magical devices, festivals and orgies. In this way pilgrimages, sacrifices and rites became popular among the Israelites and were as far as possible incorporated into the ideas of the covenant and assimilated by it. These practises gained ground rapidly. Cult

centers, particularly royal ones, acquired also political influence. The prophets fought not so much against the cultus as such as against the attempts to attach to it intrinsic value, to regard it as a fulfilment of the terms of the covenant. The polemic of the prophets, which is found also in certain psalms, was instrumental in eliminating cult centers but not in abolishing sacrifices, which remained the joy and the support of the simple man. According to the statement of Maimonides, the Torah sanctioned sacrifices and rites as a concession to the low cultural level of the people of that time.

With the destruction of the temple at Jerusalem in 586 B.C. the sacrificial cult was eliminated; the Exile allowed only for the performance of those rites which were independent of the temple; Sabbath and circumcision were regarded as signs of the covenant and their observance and practise were granted also to non-Israelites. But neither temple, priests nor sacrifices were altogether given up; only sacrifices ceased to be a matter concerning the priests alone, for the lay community demanded and obtained the right to participate in these rites and even raised the necessary expenses through a poll tax. More than this, prayer gained for itself a place of equality with sacrifice and after the Dispersion completely replaced it.

Since the days of Mosaism the idea of obligation toward one's fellow beings has been ascendant in Judaism. The system of law introduced by Moses was not the morality of the master class but of free citizens possessing equal rights. It demanded recognition of man by man. It created the ideal of "the fellow being" and of "the neighbor." This system of morality sprang from the experience of the Jew as an alien, even as a slave in Egypt, and demanded respect for human dignity. The oldest Biblical collection of laws, the *Book of the Covenant*, was undoubtedly influenced by the code of the Babylonian king Hammurabi. It greatly resembles it in its enlightened social views. While Hammurabi, for instance, conceived law in accordance with wealth and social position, while he applied the *lex talionis* literally and allowed its brutality to fall upon the shoulders of innocent people, Israel practised the doctrine of equal rights for all and recognized the *lex talionis* only as a general principle to be sparingly applied. Post-exilic Judaism finally abolished it entirely, substituting a money fine. The prophets of Israel raised thundering accusation against injustice

and oppression of every sort. Not that social conditions among the Jews were worse than in other countries nor that Israel was ever threatened by a social revolution, but the Jewish conscience was more sensitive; social injustice weighed more heavily upon it because it was regarded as a sin against God and a denial of His covenant. The morality of the prophets has subsequently become incorporated into the morality of civilized humanity. Under its influence Israelite legislation assumed that social and charitable character which comes to light especially in *Deuteronomy*. Special attention was given to the protection and care of the propertyless and the alien (metic). God was regarded as the avenger of the poor, the father of the orphans and the friend of the metics. Since the Law wished to restrict wealth and to prevent poverty or at least to mitigate it as far as possible, the propertyless were given the right to share in the crops. Legal procedure and the administration of justice were based on principles of humanity and mildness; labor and service contracts were inspired by a highly developed social spirit. The humanization of society was developed systematically in post-Biblical Judaism. The word *tzedaka* came to designate works of charity, thus making it an obligation to aid the needy. In all Jewish communities there was established a well ordered system of poor relief, for which regular taxes were raised; and even today many Jews willingly pay the traditional tithe from their income for welfare work.

The institution of slavery was never officially abolished in Judaism. A distinction was made between a Hebrew and an alien slave. The former was permitted to sell himself for only a limited number of years. If at the expiration of his servitude he still desired to continue in his master's service he was forced to undergo the ordeal of the "boring of the ear" and to serve his master forever. Rabbinic interpretation later provided for his release in the jubilee year. The slave was taken into the family and humane treatment of him was prescribed by law. The Jewish community always made strenuous efforts to redeem a Jew who was enslaved by a non-Jew. The attitude toward pagan slaves differed little from the attitude generally prevalent in the ancient world, but mildness and considerate treatment were recommended.

The most important social laws in Judaism are those which are connected with the Sabbath ideal. Whatever the influence of the Babylonian *Sapattu* may have been upon the Sabbath insti-

tution, it was only in Israel that the idea acquired a great social importance. After six days all work must cease, even such important labor as plowing and harvesting; and not only must the master celebrate but also the slave, the metic and even the cattle must have their rest. After six years a fallow year is declared for the soil; the fields are not cultivated, the grapes are not gathered, whatever grows uncultivated belongs to the poor of the locality; debts are canceled so that poverty shall not oppress the people. After seven times seven years a jubilee year is declared for all the inhabitants of the country; in this year all the slaves become free, even those who have voluntarily entered into servitude. The soil is reappropriated and reverts to the tribe; for it is considered essentially that the land belongs to God, that men are only God's servants and metics, that they can therefore sell only the yearly produce, never the soil. The regulation concerning the jubilee and its revolutionization of property relationship was never completely carried out, but its principle proved an ever effective exhortation for a more just distribution of wealth and a means of preventing the impoverishment of the masses.

The acquisition of wealth and riches although not glorified in itself was never expressly condemned. Except as found in isolated ascetic writings the idealization of poverty as found, for example, in Francis of Assisi and the mendicant orders is absent in Jewish religious ethics. The rich were, however, enjoined to consider their wealth as a trust from God and were to use it for the relief of their fellow beings. In the matter of business relations a strict ethical code was enforced which forbade any resort to trickery and dishonesty in relations with non-Jews as well as with Jews. The Bible and the Talmud allowed the Jews in their dealings with strangers certain privileges that were forbidden them in dealings with Jews, and many Jews during the Middle Ages and modern times have doubtless practised a double code of business ethics; generally speaking, however, the mediaeval rabbis ruled that this had applied only to the old pagan peoples and explicitly emphasized the fact that it had no validity for the monotheistic peoples in whose midst the Jews of the Diaspora live. The didactic books like the *Sefer chasidim* especially emphasized the need for rigid ethical relations with non-Jews.

Interest on loans to a Jew either in kind or in money was expressly forbidden. Post-Biblical Judaism interpreted this law with extraordinary

vigor and forbade any transaction which bore even the remotest resemblance to usury. *Deuteronomy* allowed interest to be taken from the stranger (XXIII: 20); but some of the rabbis, basing their view on the verse in *Proverbs*, "He that by usury and unjust gain increaseth his substance, he shall gather it for him that will pity the poor" (XXVIII: 8), inferred that no interest is to be taken even from the alien (*Baba metzia* 70b, and *Makkoth* 24a). Moses Maimonides' assertion that the taking of interest from aliens was made obligatory by Biblical law has generally been repudiated; Maimonides himself declared that this exaction had finally been abolished by rabbinical decision. With the increased participation of the Jews in money lending and the growth of capitalism a legal fiction in the form of a contract, known as a *shetar isska*, was developed whereby the taking of interest was made possible even from a Jew. This resort to legal fictions was often utilized in later Judaism as a means of modifying the rigor of the law to meet the realities of new social and economic development.

Political theory occupies a relatively insignificant place in Jewish religious doctrine. This is perhaps accounted for by the fact that the Jews have lived almost continuously under foreign rule. In ancient Israel the monarchic form of government was at first accepted with an aversion which was a natural result of rankling memories of oppression; but the idealized conception of David surrounded royalty with a poetic halo, and the perfect state of the future came to be associated with the rule of a scion of the house of Jesse. The prophets were interested in their country only when it aimed to achieve righteousness and justice. Postexilic Jewry adjusted itself to foreign rule and lived under its laws with resignation, altogether indifferent to ruling power. The Pharisees also combated the Jewish rulers of Israel whenever they violated the laws of the Torah. The yoke of Rome, "the Kingdom of Evil," was borne with reluctance, but a *modus vivendi* was finally worked out. The compromise of Jesus, "Render to Cesar the things that are Cesar's, and to God the things that are God's," was probably chosen by the great majority of the Jews. It was only a relatively small party, that of the Zealots, which refused to recognize any other master but God, and its rebellion against Rome resulted in the loss of Jewish political independence. The Jews began to lose interest in political life and to yearn for the days of the Messiah in which God will restore the

ideal world kingdom and in which Israel will enjoy full freedom and will have the rank of *primus inter pares* among the nations. In the meantime the Jews felt that they were in Galuth (Diaspora); a Palestinian teacher of the third century maintained that God made the Jews swear that they would not revolt against the nations among whom they were destined to live and promised that the latter in their turn would not oppress them over much (*Kethuboth* 111a). With this the principle of loyalty toward the state was established, provided it did not jeopardize the integrity of the Jewish religion. The Babylonian teacher Mar Samuel coined the expression *Dina demalchutha dina*, which made the civil law of the state valid, thus enabling the Jews to submit to alien legal rule and to take the oath in alien courts with an easier conscience.

Ancient Jewish life was not devoid of a warlike spirit. Yahweh was characterized as a "man of war." The prescriptions of the Torah with regard to the extermination of the Canaanites and the story in the book of *Joshua* describing the manner in which it was carried out were extremely cruel expressions of the resentment engendered by the fact that the absorption of the Canaanitish population was slower than anticipated. The progress of religious ideas among the Jews is attested by the peaceful spirit that pervades the stories of the patriarchs and by the Deuteronomic prescriptions with regard to humanizing warfare. Despite the fact that the prophets lived in mortal dread of the Assyrian military power they proclaimed the ideal of eternal peace. The ideal ruler of the future, it was foretold, would be a prince of peace. Jewish tradition transformed King David from a warrior into a pious bard who leads his herd in the ways of God. The Talmud repudiates every war of aggression and sanctions only wars of defense. When the Hasmoneans wished to build the Jewish state on a military basis, the Pharisees opposed them with their pacifist ideal. The leaders could not prevent the people from giving free vent to their passions in bloody revolts, but the latter persistently clung to the Messianic ideal and regarded their struggle against Rome as the birth throes of a better and more ideal day. The destruction of their political independence robbed the Jews of all military ambitions; the state laws even excluded them from military service. World peace was and still is one of the most fervent of the Messianic hopes of Judaism.

The family in Judaism is considered as the corner stone of Jewish communal life. Its pur-

pose is not only to propagate but also to promote moral adhesion between its component members. Marriage is ordained by God; therefore woman, who like man was created in His image, was allotted her place in this world in order that she might be "a helpmeet for him." Polygamy was permitted, although monogamy was in very early times the customary form of marriage. For western Jewry the principle of monogamy was established by a ruling of Gershom ben Jehuda in Mainz (c. 1000) and since then has had the force of a law. Although divorce is allowed it is looked upon with disapproval in some circles and in general is regarded as a painful experience. About the time Christianity arose the prevailing conception was that divorce was forbidden by divine law—a belief which has been preserved by the Roman Catholic church down to our own time. The Pharisees, on the contrary, sanctioned divorce; there was difference of opinion among them with regard merely to the conditions under which it was justified. According to Biblical law a woman was powerless to prevent her husband from divorcing her; but the Talmud and later the mediaeval rabbis insisted that some consideration be given to the woman's wishes. The legal status of woman in Jewish law is far below that of man; as, for instance, in her right to inherit and to bring suit at court. Even her domestic duties are prescribed. Despite all these disqualifications woman was never regarded as merely the property of man and as completely without rights, as were Babylonian, Greek and Roman women. In this respect social customs under the quiet influence of religion were far more advanced than the codified laws. In the course of ages they have assigned to woman a high social plane, which she still maintains in the Jewish family. The close intimacy of Jewish family life has always and everywhere been recognized as a special characteristic of Judaism.

Learning and education were particularly emphasized in Judaism; throughout Jewish history learning has in fact been the most admired of accomplishments. The Pentateuch enjoins all parents to give religious instruction to their children; and in post-Biblical Judaism the unique attempt was made to educate the whole people in its religion through the institutions of the synagogue and the school, or *beth ha-midrash*, which usually existed in connection with it. This emphasis on learning, which is responsible for the overdeveloped intellectuality of the Jew, resulted from time to time in the creation of a

social cleavage between the intellectual aristocracy and the more uncultivated masses. In Talmudic times a division appeared between the learned and the "people of the land" (*am ha-aretz*), whose strict observance of the Law was questioned and who as a result were not trusted as witnesses and with whom intermarriage was discouraged. This overemphasis upon learning served also to provoke reaction in the form of mystical movements, which had a greater appeal to the masses, and was likewise one of the prime factors in the rise of Chassidism.

The practise of the Jewish religion has had considerable influence upon the characteristics of the Jews, their social behavior and their social and economic status. The observance of the numerous regulations imposed on the Jew by his faith has led to a strong disciplining of the will as well as to a marked practical rationalization of life. Above all it has given the Jew a feeling of otherness, a feeling that he is a stranger. Observances such as the dietary laws have prevented him from accepting alien hospitality; his Sabbath and festivals with all their attendant rites have marked him off from the surrounding world. This feeling of otherness was further strengthened by the Jewish belief in the doctrine of the election of Israel; even as early as the Hellenistic period in Alexandria enemies of the Jews continually attacked them for their exclusiveness. On the other hand, the belief that they are a chosen people has contributed greatly to the continued survival of Judaism despite all persecution and hostility.

There has been much theorizing as to the effect of Judaism on the rise of capitalism and the capitalist spirit. The most impressive attempt of this kind is Sombart's *Die Juden und das Wirtschaftsleben* (Leipsic 1911, tr. by M. Epstein, London 1913). Sombart finds the spirit of Judaism identical with the spirit of capitalism. Judaism for him is characterized by "the preponderance of religious interests, the idea of divine rewards and punishments, asceticism within the world, the close relationship between religion and business, the arithmetical conception of sin, and above all the rationalization of life." These characteristics, he claims, have developed in the Jews those traits which have made them one of the chief factors in the rise of modern capitalism. In the light of careful study of the sources this view is completely one-sided and exaggerated. Only this can be proved: the traditional mode of life of the Jews enabled them to participate in capitalistic activities and their



religion did not hinder them from exploiting these opportunities, notwithstanding the fact that the spirit of both the Old and the New Testament is diametrically opposed to the spirit of capitalism. It is not Judaism but the individual Jew who has contributed to the development of the modern economic system, aided as he has been by external and purely historic forces and circumstances. Max Weber also traces the participation of the Jews in trade and money lending to the influence of their religion. According to him the practise of rabbinic Judaism with all its ritual precluded the possibility of engaging in agriculture. His religious duties made it necessary for the Jew to live in a city close to other Jews and to Jewish institutions and thus he came to engage in trade. Moreover the emphasis placed on learning led many Jews to money lending as the occupation which could provide them with the greatest amount of leisure for study of the law. Weber failed to see, however, that similar conditions in Palestine and Babylonia did not prevent Jews from engaging in agriculture.

The modern period which brought about Jewish emancipation caused a serious crisis in Judaism, from which it has not yet emerged. The existence of the Jewish traditional mode of life was threatened from three separate quarters. The greatest menace issued from the changes in economic and social conditions. Mercantilism and early capitalism opened new fields to the Jewish enterprising spirit. The newly risen middle class, which began to play an important part in all countries, was inspired by the ideals of the Enlightenment and emancipating itself from traditional religion welcomed into its ranks the intelligent, enterprising and practical Jews. For two centuries Judaism had been dominated by a gloomy philosophy in which this world was regarded as a vale of tears; it was weighted down with the yearning for redemption in the world to come. Now the Jews began to take a deeper interest in their earthly existence. They wished to compensate themselves fully for all the deprivations they had suffered in the course of the centuries. They were ready even to renounce their belief in eternal salvation and to discontinue their observance of the dietary laws and the Sabbath in favor of worldly well being. In this way the traditional mode of life that had existed for ages was destroyed.

The second danger was of an intellectual nature. Moses Mendelssohn's philosophy of enlightenment completely rationalized and lev-

eled Judaism by identifying it with natural religion. It was "revealed law" instead of revealed religion which now became the center of Judaism. Therefore the followers of Mendelssohn regarded Judaism as nothing but a mass of wretched, mechanical restrictions which perpetuated the segregation of the Jews, a situation which they very much resented. They believed that piety and religion were not essential to Judaism; and when Schleiermacher, for whom they had great admiration, declared that the basis of religions was what he called *das Religiöse*, they were hard put to find this basis in their own faith because it was buried under the crushing weight of a rigorous formalism. Thus it came about that dogmatic Judaism, which for thousands of years had been preserved intact, became subject to violent criticism. The leaders of rabbinic Judaism were incapable of facing the new problems intelligently. Instead they insisted upon an even stricter observance of tradition, ignoring the fact that Chassidism in its initial stages was a movement concerned with the inner liberation of the Jews.

The political situation also appeared as a source of danger. Napoleon was confronted by the problem whether it was possible for him to compromise with Judaism in the same way as with the Christian churches; in other words, whether the Jews were to be tolerated as a religious group or whether they were to be suppressed as a national unit. The solution which he himself offered was that the Jews were to eliminate all national elements in their tradition and retain only their religious ideals. The Great Sanhedrin gladly accepted this solution, which acquired authoritative force in the subsequent struggle for emancipation. The unity of Judaism, which had persisted despite the Dispersion, was disrupted by a political power and the Jews now came to be differentiated according to the countries in which they lived. For the first time the absence of a common religious authority began to be felt; and the Hebrew language, which up to that time had served as a cultural and religious bond between Jews, made way for the languages of their adopted countries.

It was under the influence of these conditions that Reform Judaism arose in Germany. The early reformers were concerned with making Judaism more "presentable" to western civilization. Impelled by the desire for political emancipation and the fear lest their patriotic sentiments for the land in which they were residing be questioned, they tried to make Judaism as

similar as possible to the religion of their neighbors. The first attempts to cope with the situation were inspired by Protestantism and were confined exclusively to the aesthetic transformation of the synagogue service. More decorum was introduced, the organ was brought in, German prayers and a German sermon were added. Later the prayers concerning the national and political aspirations of the Jews were excluded from the Reform prayer book.

The theoretical basis for Reform Judaism was supplied chiefly by the writings of Holdheim and Geiger. A great impetus to modernization was furnished also by the romantic movement, which discovered the concept of "historical Judaism," and by the new "science of Judaism" founded by Leopold Zunz. Zunz began to study Judaism systematically and in the spirit of critical science. He succeeded in vitalizing its spirit, in giving greater significance to its institutions, in establishing the validity of its doctrines and in lending greater importance to its educational system. Jewish theology, nourished by the spirit of idealism, burst into new flower in this fertile soil. Laying special emphasis upon the prophetic conception of the unity of the human race and upon the Messianic ideal it therefore demanded, besides the purity of faith, religious sentiment and the permeation not only of the ceremonial but of all Jewish life with warmth and inner content. Geiger emphasized also the historic character and the relativity of religious phenomena. He insisted upon a historical approach to religion and upon a return to the prophetic purity of idea and form. He conceived of the Dispersion of the Jews as a means of fulfilling their Messianic mission and of their emancipation as a progressive step in that direction. The Reform movement spread to other countries of western Europe and to the United States, where it was propagated by Isaac Mayer Wise. The extreme element of Reform Judaism has scrapped the entire Jewish ritual—not merely its religious mystical elements. In a few instances the practise of exchanging pulpits between Christian and Jewish ministers has been introduced and perhaps the only difference between them is that concerning the attitude toward Jesus. On the other hand, other elements of Reform Judaism have under the stimulus of the Jewish national movement acquired a much more national orientation than that of the early reformers.

During the early days of the reform movement Jewish orthodoxy in Germany found its leader in Samson Raphael Hirsch. Hirsch contrasted

revealed Judaism with the spirit of the times and looked upon the Diaspora as a school of purification established by God and upon the Jew as the bearer of the mission to regain his relationship with God through the fulfilment of the prescribed duties. Conservative Judaism has developed under the leadership of men like Hildesheimer in Berlin and Solomon Schachtel in New York; its aim is to modernize the Jewish religion and at the same time to preserve its traditional character in all the essentials. The great mass of eastern European Jews still adhere to strict orthodoxy although here too the revolt against tradition made itself felt in the *haskalah* (enlightenment) movement, especially during the post-war period with its complete disruption of Jewish political and economic life. The most militant elements of orthodoxy have united in the Agudath Israel, which aims to perpetuate the rigorous regulation of Jewish life by rabbinic Judaism. It combines the orthodox elements of eastern Europe, especially the important Chassidic rabbis, the political orthodoxy of Hungary and Germany and the western European orthodoxy of the school of Samson Raphael Hirsch.

Under the influence of neoromanticism at the end of the nineteenth century a religious revival took place. The Reform movement grew more vigorous, and thinkers like Herman Cohen and Martin Buber gave a deeper meaning to the conception of God, communal ideals and Messianism. Simultaneously a great upheaval took place among the Jews in the east. A large number emigrated to America and brought along with them their religious ideals, which in turn influenced Jewish life in the old countries, now drawn into the general non-Jewish movements. The Jewish masses with their national attitudes, intense experiences and sentiments and their dreams and hopes nourished by Chassidism became a decisive factor in Judaism, and their views and customs gained a foothold in the communities of the west. The national character of the Jewish religion and ethics was emphasized by such thinkers as Peretz Smolenskin and Ahad Ha-am. World Jewry, which had been divided by differences of religious opinion and national cultural affiliations, was once more furnished by nationalism with a common platform. Zionists propagandized their views in all camps. The revival of the Hebrew language became a part of its program; new Hebrew and Yiddish literatures sprang to life. New literary, historical and religious values were created which established a bridge between the lives of eastern and western

Jewry. At first the Jews of the west repudiated these values, but their own increasing decadence and the growing influence of east European Jews helped to revive Judaism in the west.

With the increasing participation of the Jews in the political, social, economic and cultural life of the countries of their adoption Judaism no longer completely dominated their entire life but constituted only one of their interests. Furthermore industrialization and antisemitism have driven the Jews to the large cities, where they are exposed to the pressure of intellectual and cultural assimilation. Where they live in small groups they are constantly decimated through mixed marriages and conversions. The following of the orthodox ritual has become increasingly difficult with modern economic conditions. The observance of the Sabbath prevents a Jew from receiving employment in most government offices and with other Christian employers. Economic disadvantages are also incurred by the Jewish shopkeeper who is forced to observe both Saturday and Sunday. The observance of the dietary laws results in an increase in living costs, and the desire to transmit traditional Judaism to the young generation results in both economic and spiritual complications. It is perhaps due to these factors that except in eastern Europe Judaism has retained its strongest hold on the upper and middle classes and has relatively little influence on the mass of Jewish workers.

The historic significance of Judaism is very apparent. Through Christianity and Mohammedanism it has become one of the most important factors in western civilization. Its "ethics," says Max Weber, "still largely forms our present European and Near Eastern religious ethics" (*Gesammelte Aufsätze zur Religionssoziologie*, vol. iii, p. 6). The Christian church, according to Harnack, was largely able to carry on its work because the soil was prepared for it by Judaism. At the birth of Christianity there were religious communities to be found in the large cities. Knowledge of the Old Testament was widely disseminated, and it was quite easy for the Christian church to adapt for its purposes the existing Jewish catechisms and liturgies. The people had already been accustomed to the religious service and to the regulation of their private lives. Christianity inherited from Judaism an impressive apologetic for monotheism, historical teleology, including the day of judgment, as well as a system of ethics which involved the obligation of individual propaganda. Christian ethics is also based upon the Jewish. St. Paul of course

wages war upon the Law, but what he opposed was only the ceremonial law. He accepted the moral law of Judaism and this gave the church the opportunity to transform its original hostile attitude toward this world into an affirmation of the social and political life. In the body of Jewish tradition Christianity found the pattern for a well integrated national life which could serve as a guide to all the complicated problems offered by political, social and economic activities.

Judaism advanced the idea of a legal order that was established by God and of a governmental power designed to issue laws and to punish their transgression. It provided Christianity with the weekly festival and rest day, notwithstanding the many controversies called forth in the church by the character of the Sunday celebration. Easter and Pentecost also were derived from Judaism, even though both were given a Christian reinterpretation. From the synagogue Christianity borrowed not only the idea of a spiritualized religious service but also a great deal of material for its ceremonial rites and liturgy; above all, the institution of recitation and the expounding of the Scriptures. The Christian communities were fashioned after Jewish models and maintained the same welfare organizations. The word alms itself originated in the Greek translation of the Bible. The church tithe is but a continuation of that of Biblical times.

Most important of all was the Christian acceptance of the Jewish Bible. "Had it not accepted the Old Testament," says Weber, "there would have arisen on the soil of Hellenism pneumatic sects, mystery cult societies, and the worship of Kyrios Christos, but there never would have been a Christian Church and a Christian daily ethics, as there would have been no basis for their existence." It was the Old Testament which proclaimed the God of creation and of the covenant and became the foundation and the confirmation of the New Testament. This is evident from the fact that since the days of Marcion the church has repudiated all attempts to separate the New Testament from the Old.

The fact that the Jews preserved the Old Testament in its original text and studied it continually had a certain influence on all phases of Christianity. Christians were able to apply to their Jewish neighbors for solutions of difficulties in dogma, and from this it can readily be seen that the church was not wrong in accusing the Jews of playing into the hands of the her-

etics. The great period of Biblical influence came with the Reformation, which not only preached a repudiation of dogma in favor of Scripture and made of the Bible a popular book but also had it translated directly from the Hebrew with the assistance of Jewish commentators.

The Biblical idea of a "general priesthood," or of a people of priests, required vindication in the daily life of the individual, and so beside the Sermon on the Mount the Decalogue acquired equal importance in the eyes of the Christian, inasmuch as it contained the principle of divine and brotherly love. The Old Testament became the final court of appeal concerning questions of right, customs, family and professional life. Moreover its acceptance of this world had a determining influence on the new concepts of the state and society. The constitutional history of Israel was the inspiration for political philosophers of all schools until the eighteenth century. Calvinism also brought back into Protestantism the glorification of worldly activity, an ideal which hitherto had been absent because of the influence of Pauline doctrines. This sentiment found its highest expression in the Bibliolatry of Puritanism, which wished to identify itself with the spirit of the Bible but was forced by the sad experiences of religious persecutions and civil war to pay attention to only one aspect of Biblical piety. Thus the Puritan concept of God took on an austere severe character, something which had long been discarded by Judaism and Christianity. Once more the god of war who punishes and persecutes ruthlessly, who orders the annihilation of one's enemies without mercy, became an ideal. The Puritans regarded themselves as instruments of God's will and therefore thought it their duty to assert themselves in life. They took over to a great extent the laws of the Old Testament and also surrounded the Sabbath with a new legalism which was as stringent as that of the Talmud.

Mohammedanism like Christianity branches from Judaism. The Arabs became acquainted with Jewish doctrines not only directly but also indirectly in Christian form, and it is difficult to demarcate exactly the two spheres of influence. Mohammed proclaimed to pagan Arabdom the most rigid monotheism in all its old Biblical austerity. He based his ethics upon the Decalogue and from Judaism he borrowed the regulations with regard to what is clean and unclean and the prohibition of foods, excoriating

transgression as a heinous crime. The Jewish custom of praying he also assimilated into Islam. The mosque is patterned after the synagogue. The Mohammedan weekly day of rest is devoted to prayer, recitation and sermons, although work is not prohibited on that day. Mohammed, however, did not adopt the Bible for Islam. He regarded himself as the "seal of prophecy" and proclaimed the Koran as the confirmation and the divine substitute for the Jewish Scriptures. Nevertheless, his attachment to the past is indicative of a detailed knowledge of post-Biblical Jewish lore, for the Sunna, which is regarded as a source of authority beside the Koran, corresponds to the role of tradition in Judaism.

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See: LAW, section on JEWISH LAW, CHASSIDISM, MESSIANISM; DIASPORA; GHETTO; ANTISEMITISM, JEWISH EMANCIPATION, JEWISH AUTONOMY; ZIONISM; RELIGION, SACRED BOOKS, PRIESTHOOD, THEOCRACY; CHRISTIANITY; ISLAM.

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**JUDD, ORANGE** (1822-92), American agricultural journalist. Judd ranks with Henry Wallace and S. A. Knapp as a popularizer of agricultural science. A native of rural New York and a graduate of Wesleyan University, he became editor in 1853 of the *American Agriculturist*, published in New York. Subsequently he edited the New York Times farm section and the *Prairie Farmer* and the *Orange Judd Farmer*, both of

which were published in Chicago. He was extremely successful as both editor and publisher. At a time when American agriculture was undergoing great changes Judd preached the value of scientific farming and encouraged the introduction of agricultural machinery. He believed in the liberal use of advertising, was aggressive in exposing popular swindles, sponsored agricultural exhibits by his readers and in 1857-58 distributed sorghum seed from Europe among many thousand farmers. The insistent efforts of Judd and the financial cooperation he secured led the Connecticut legislature in 1875 to establish the first state agricultural experiment station in the United States. He became a trustee of Wesleyan University and made the institution a gift of Orange Judd Hall of Natural Science. Judd experimented with building modernized houses at low cost and published the plans. In the days of the Grange and populism he insisted that the solution of the farmers' problems lay in better farming and not in agrarian politics—an attitude characteristic of his concentration on the practical aspects of agriculture.

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*Consult:* In addition to journals cited. *Cyclopedia of American Agriculture*, ed. by L. H. Bailey, vol. IV (4th ed. New York 1912) p. 588, *Appleton's Annual Cyclopaedia*, n. s., vol. xvii (New York 1893) p. 554.

**JUDGMENTS.** The aim of every civil proceeding before a judicial tribunal is to obtain from it a pronouncement upon the right asserted by the plaintiff. That pronouncement when vested with the necessary legal formality becomes the judgment of the tribunal. A judgment (the decree of equity and admiralty courts) is therefore an expression of the court's decisory power; it represents a conclusion reached by the court after the application of the law to the facts—a conclusion moreover stamped with the authority of the state, which as indicated either by the words of the judgment or by necessary implication from its phrasing stands ready to lend its aid in translating the conclusion into terms of social effectiveness.

It is a principle dictated by the public policy of ordered society that a matter once finally determined by judgment shall not again be the subject of legal controversy. This principle is expressed in the Roman law maxims *Ne bis de eadem re sit actio* and *Res judicata pro veritate accipitur* and finds similar acceptance in the Germanic law. But the Roman judgment is in general binding only upon the parties, while the

Germanic judgment as the product of a judicial assembly is binding upon all who have been present at its rendition. Moreover the judicial proceeding of republican Rome because of its two stages of *jus* and *judicium* has a certain conclusive effect even prior to judgment. This effect attaches to the *litis contestatio*, or authentication of the parties' will to litigate, occurring before the praetor *in jure* and accomplished in the *legis actio* period by ritualistic acts, in the formulary period by the parties' acceptance of the written formula defining the activity of the judex. For with the *litis contestatio* the plaintiff's right of action ceases: it has become merged in the right to a *judicium*; that is, to a judicial hearing and decision. This operation was known as *consumptio*: the right of action was deemed to be consumed or extinguished in the generation of the new right. But when judgment is rendered in the cause the new right itself ceases to exist, for it in turn becomes merged in the judgment. Thus either the fact of *litis contestatio* or the fact of judgment may be a bar to future litigation. In the formulary procedure this bar must be effectuated for the most part by exception: the *exceptio rei in judicium deductae* in the one case, the *exceptio rei judicatae* in the other. It is maintained, however, that ultimately the two *exceptiones* became combined in a uniform *exceptio rei judicatae vel in judicium deductae*. In the imperial procedure, with its effacement of the distinction between *jus* and *judicium*, there is also effaced the intermediate *consumptio* of the former system, and the original right of action continues until merged in the judgment—a rule governing in modern procedure. The principle of conclusiveness of the judgment naturally prevails also in modern law. The French law speaks of the *chose jugée*, the Italian of the *cosa giudicata* and the German of *materielle Rechtskraft*, while Anglo-American law by a direct use of the Roman term speaks here of the doctrine of *res judicata*. In virtue of this doctrine the fact of the prior judgment "has a twofold operation. Not only does it estop the parties from afterwards controverting any question or issue thereby decided, but it also bars the party who has obtained relief thereby from subsequently receiving the same relief against the same party" (Bower, G. Spencer, *The Doctrine of Res judicata*, p. 175). The first of these functions comes under the traditional head of estoppel by record; the second is identified by the term merger, inasmuch as the original claim is absorbed by or merged in the judgment, in Roman terminology "con-

sumed" by the judgment. In both respects therefore the judgment if valid concludes the same parties from relitigating the same question in a fresh proceeding and concludes also their privies; that is to say, those claiming under them. But conclusiveness in this sense does not in any modern legal system imply that the judgment may not be reexamined by competent judicial authority in a special proceeding for that purpose within the time prescribed by law. In other words, the doctrine of *res judicata* in no way collides with provision made by the state for appeals or other means of review. Thus a judgment terminating a particular proceeding is final in one sense upon its rendition, but in another sense it is not final until the remedies available against it have been exhausted or the time for their exercise has passed—a distinction which the terminology of Anglo-American law, unlike that of the continent, fails to reflect.

The character of the Roman judicial proceeding until the imperial period excludes the notion of complaint made to higher authority against the judgment. Since in the periods of *legis actio* and formula the proceeding consists essentially of private arbitration authorized and regulated by the state, in which the function of pronouncing judgment lies with the private citizen serving as judex, the constitutional partition of powers is such as to prevent any appeal from the *sententia* of the judex. A means, to be sure, is provided for opposing orders of the magistrate (*intercessio*); but as against the valid *sententia* there is no recourse save that which arose in the formulary period from the presence of the praetorian remedy of *restitutio in integrum*, available, for instance, on account of duress exercised against judex or party, corruption of the judge or the fact that the judgment was based upon perjured testimony or forged documents (Wenger, p. 202). In the Germanic law the judgment once pronounced is even less open to question than in the earlier Roman law but for different reasons. In the Germanic popular judicial assembly each of the freemen present has a voice in the decision, but as an aid in the transaction of business there is a committee of one or more persons charged with the duty of finding judgment (*Schöffen*, *scabini*). If their proposal of judgment is assented to by the assembly, then the presiding officer pronounces this finding as the judgment of the court. But before the formal pronouncement it is open to either party or any other member of the assembly to impeach (*schelten*, *blasphemare*) the proposal by denounc-

ing it as bad law. In that event the impeacher must offer a substitute proposal. The controversy thus arising as to which of the proposals is correct is always a personal one between finder and impeacher (Planck, p. 19). The decision of this controversy among some Germanic peoples is by judicial duel; in the later period it appears to have been obtained by consultation of some other court, which was presumably a purer and more secure source of legal knowledge (Planck, p. 21). The decision is for the information of the court of the original controversy, which renders judgment in conformity therewith.

The Germanic judgment, unlike the Roman, does not pass on the merits of a cause: it is a proof judgment that under the prevailing system of formal, unilateral proof determines which party has the right of proof, what he is to prove and which of the recognized means of proof he is to employ. But inferentially it also declares the consequences of making or failing to make the proof in question and hence was said to be "double-tongued" (*zweizüngig*). Compliance with the judgment is insured by a contractual undertaking forthwith exacted from the parties, the so-called judgment fulfilment promise.

To the existence of *res judicata* in Anglo-American law it is essential that the court shall be in no respect lacking in power to render the judgment in question; for otherwise the judgment is void. "Broadly speaking, nullity of judgments results from one or other of the following causes: 1. Want of a legally organized court or tribunal; 2. Want of requisite jurisdiction over the subject matter or the parties or both; 3. Want of power to grant the relief contained in the judgment" (Freeman, *Law of judgments*, vol. i, sect. 325). And, subject to what will later be said, a void judgment has no legal effect for any purpose. Legal inexistence of the null judgment was also the rule of the Roman law, which, however, extended its category of nullity far beyond the Anglo-American, since it held to be null even the judgment which was in plain violation of a rule of law (*contra jus constitutionis*). By the generally accepted view the case was otherwise in the Germanic law: here once a judgment had been formally pronounced its legal existence could never be challenged. This characteristic of the Germanic judgment has left its impress upon the continental procedure of today. For although the latter recognizes widely the conception of nullity, most of the defects which in Anglo-American law would render the judgment void pass in that system

beyond the reach of attack, unless within the designated time there is employed a proper proceeding to contest the judgment. In Anglo-American law the conceptions of nullity and invalidity are identical. Hence it recognizes, on the one hand, the erroneous judgment open to question only by an appropriate proceeding specifically directed against it and, on the other, the void judgment open to contest at any time and in any manner. Correspondingly, distinction is made between direct attack, which signifies a contesting of the judgment by the specific means furnished by law for that express purpose, and collateral attack, which denotes attack made in a collateral proceeding. By the rule generally followed in the United States collateral attack by a party or privy is usually limited to the situation where the invalidity appears on the face of the record. But a stranger to the original proceeding may not only use against the judgment every ground open to the party collaterally but is also permitted to show generally that the judgment was obtained by fraud or collusion. In every case where the judgment bears upon its face the evidence of its own invalidity the conception of invalidity as legal inexistence is absolute. But where the invalidity is not so disclosed and yet may be established by extrinsic evidence, as in the case of a creditor alleging fraud or collusion, the judgment is not void in this absolute sense. Such a judgment is commonly referred to as voidable. Until its invalidation by judicial decree it is not destitute of legal existence, since, for one thing, it may give good title to an innocent purchaser.

Some few cases excepted, the judgment requires to be attended with the means of carrying it into effect; in other words, the state must provide means of execution. But this may assume a variety of forms dictated primarily by the varying character of the judgment, which may be one binding the defendant generally (judgment *in personam*), binding him only as to specific property (judgment *quasi in rem*) or binding specific property as against all the world (judgment *in rem*). Viewed from another angle the judgment may require the payment of money, the delivery of personal property, the transfer of the possession of real property or the doing or not doing or the suffering to be done or not done of specific acts of many different sorts. Of principal importance is the execution of money judgments, which assumes various forms.

The primitive form of execution is the untrammelled exercise of self-help steps taken by the

creditor to seize the debtor's person or property to hold as coercive security for the satisfaction of his claim. Indeed a relic of this very thing persists today in the Anglo-American law of distress. But in both the Roman and Germanic law, with the opening of documented history, marked by the Roman Twelve Tables and the Frankish *lex salica*, this personal activity of the creditor is already subjected to an important measure of judicial regulation—a measure which the subsequent development tends more and more to transform into the general requirement that steps by way of execution shall be preceded by judicial judgment. Yet in so far as the state comes to require judgment as a prelude to execution it may still leave the actual work of execution to the creditor. This was the case in the Roman *legis actio* period; it was largely the case in the Germanic system. In the Roman law it is the judgment itself that is the basis of execution, subject, however, until imperial times to special ratification (*legis actio per manus injectionem*) or authorization (*actio iudicati*) on the part of the state. In the Germanic law again the judgment is a remoter condition of execution. What is executed here is not the judgment at all but the judgment fulfilment contract, the promise to prove or pay, which the event of the proof directed by the judgment has turned into an unconditional promise to pay. The early execution may affect both person and property. Measures against the person loom large in the law of the Twelve Tables: the Roman creditor of this period is entitled to put his debtor to death or sell him *trans Tiberim*. By the *lex poetelia* this right is cut down to that of holding him in debt servitude. A generally applicable form of execution against property does not appear in the Roman law until the formulary period. Then it comes as the praetorian *missio in bona*, whereby the aggregate property of the debtor is made available not for a particular creditor but for his creditors as a class. Postjudgment execution against specific property (*pignus in causa iudicati captum*) is a later institution originating in the time of Antoninus Pius. In the Germanic law the person of the debtor may be an object of execution, but the creditor has no such general right in this regard as is encountered in the early Roman law. His right for the most part is associated with the penalty of peacelessness or outlawry, to which is exposed the debtor guilty of contumacy, as in persistent refusal to give the judgment fulfilment promise. Normally it is the goods of the debtor against which execution is

directed; but this situation is modified in the later Germanic development.

For English law, since its emergence as an individual system, the relation of execution to judgment has been in general the same as it is today, although the case is different as to the measures available on execution. The feudal principle stood in the way of execution against the person, for this entailed upon the lord the loss of his vassal's services. It was opposed also to the subjection of land to the payment of debts, for this would disturb the feudal nexus. Hence the common law restricted execution against the person to cases where the judgment debt arose out of a forcible injury to the plaintiff, involving a breach of the king's peace, and allowed no ordinary money execution to go against land. But largely as a result of various statutes beginning in 1267 execution by way of imprisonment of the debtor came to be open very generally to the creditor and long continued to be an oppressive feature of the administration of civil justice. Some restraint upon the creditor, however, was exercised by the rule which forbade his subsequent resort to the property of a debtor whom he had thus caused to be imprisoned. In the matter of land the old restriction was broken into by the Statute of Westminster II [13 Edw. I, c. 18 (1285)], which enabled the creditor by writ of *elegit* in case of insufficiency of personal property to take possession of a moiety of the debtor's land for the purpose of satisfying the debt out of its profits. Personal property, however, could always be proceeded against and sold under the writ of *fiery facias*. Such was the case as to judgments of the common law courts. The Chancery, which professed to act only *in personam*, relied in the main upon punishment for contempt of court. But it also exercised the power of causing a recalcitrant party's goods and lands to be seized by writ of sequestration as a means of coercion and for the purpose of applying the profits to the satisfaction of the creditor. It should be noticed also that the creditor with a common law judgment might have a claim of equitable cognizance, for the equitable interests of a debtor with slight exception were beyond the reach of common law execution. The aid of the court of equity under such circumstances has come to be known as equitable execution.

The later development both in England and America has introduced marked changes. Of imprisonment for debt, apart from that incident to the contempt process of courts of equity,



merely attenuated fragments are left, reserved in general for cases of fraud and tortious acts. In the United States by a rule whose history dates back to a British act of Parliament of 1732, applying to the American colonies (5 Geo. II, c. 7) and recognizing a practise already obtaining in at least some of them, land is everywhere answerable for the owner's debts, generally by sale but in some jurisdictions by extent; that is to say, allotment to the creditor at an appraised value. In England the case is not quite the same, yet the creditor after proceeding by *elegit*, which now affects the whole instead of a moiety of the debtor's land, may by application to the court cause the land to be sold in satisfaction of the debt. Courts in the exercise of equitable jurisdiction have commonly been given the added power of enforcing their money judgments by the same manner of execution as is available for common law judgments. On the other hand, the contempt process is no longer generally applicable to money decrees.

From an early day legal systems have been obliged to contend with the fraudulent acts of a debtor committed in the endeavor to place his property beyond the reach of his creditor. Here the Roman law provided the *actio pauliana* for the purpose of setting aside any fraudulent alienation on the part of the debtor. When the particular acts against which this action was directed are considered (Roby, H. J., *Roman Private Law in the Times of Cicero and the Antonines*, 2 vols., Cambridge, Eng. 1902, vol. II, p. 274), it may be concluded that in point of dishonest ingenuity the fraudulent debtor of that era was not far behind his successor of today. The devices resorted to by the latter are of the most varied character. Most elementary is the conveyance of property to a relative or friend in anticipation of the judgment; common also is the collusive judgment intended to protect the debtor's estate from the judgment of a bona fide creditor. The corner stone of the Anglo-American law in the present regard is the English Statute of Fraudulent Conveyances (13 Eliz., c. 5) dating from 1571, which declared void all alienations made with intent to hinder, delay or defraud creditors. This statute has been hardly more than rewritten by the Law of Property Act [15 Geo. V, c. 20 (1925)]. The matter of fraudulent conveyances also finds regulation in various modern American statutes, notably the Uniform Fraudulent Conveyance Act, which has been enacted in some fifteen states of the union. While the defrauded creditor is not with-

out remedy through common law processes, especially as aided by statute, the equitable jurisdiction of the courts is of superior effectiveness for his relief. Accordingly the work of undoing such fraudulent transactions largely falls to that jurisdiction. Originally the case here presented was for the most part one of equitable execution, for invocation of the equitable aid presupposed the recovery of judgment by the creditor and the return of ordinary execution unsatisfied or at least his recovery of judgment. This is still the rule, subject to some exceptions, in perhaps the majority of the American jurisdictions. Elsewhere, however, and particularly under the Uniform Fraudulent Conveyance Act the rule has given way; and as a result the aid in question may be invoked in advance of the judicial ascertainment of the creditor's claim. In case of the debtor's bankruptcy the right to attack the fraudulent alienation passes to the trustee in bankruptcy.

A characteristic feature of American legislation is the emphasis which it places upon the designation of a greater or less quantum of property as exempt from execution. At common law out of the property available to the creditor nothing but a minimum amount of wearing apparel could be retained by the debtor. And in the English law of today his exemption extends only to bedding, wearing apparel and tools of trade not exceeding £5 in value. A very different attitude appears in the United States. The personal property exemption is universally of a more generous character; sometimes it is of striking dimensions. Even more significant is the American policy of liberal homestead exemption laws which has been influential in many parts of the world.

In their progression from the original ruthless treatment accorded the defaulting debtor legal systems have come fully to satisfy the dictates of humanity. But in the United States recognition of the larger social interest involved has carried it far beyond this point to a distance which of necessity varies as the particularistic play of economic and social forces gives the creditor or the debtor influence the higher measure of political ascendancy. By and large, however, the situation in the United States induces the doubt whether the creditor is receiving the protection to which he is entitled. There is general agreement that the way to judgment is too thickly beset with procedural obstacles. But after judgment is had, the way to realization is also an obstructed one. The ultraliberal exemp-

tions frequently encountered; the facility with which a knavish debtor may effect a concealment of his assets, to be overcome if at all only by toilsome effort on the part of the creditor; and, finally, the impassable barrier which may be erected by a bankruptcy law not oversolicitous on the creditor's behalf, all operate to hinder the creditor from reaching his goal.

A study of the civil courts in New York City made by the Institute of Law of Johns Hopkins University in 1931 discloses some startling facts in this regard. Its examination extended to 4279 of the 9365 judgments entered by the Supreme Court during 1930 and to all the judgments of the City Court entered during that year. From this examination it appears with respect to the pecuniary aggregates of these two classes of judgments that satisfaction was recorded only as to 6.72 percent in the one class and 7.17 percent in the other. While on account of the greater opportunities for subtraction of assets obtaining in a metropolitan community such as New York the percentage of realization is probably much lower than that prevailing in the country as a whole, these figures have a highly significant bearing on the general situation. They tend strongly to confirm the idea that American law in its present form is not maintaining the just balance of advantage as between debtor and creditor.

Finally, it is to be noted also that the modern mobility of capital increases the risks of the international evasion of judgments. With reference to the international recognition of judgments it is the modern English rule that a foreign judgment is in the main deemed conclusive, except as against the objection of lack of jurisdiction or of fraud. In the United States the doctrine of the federal Supreme Court is substantially the same, with the significant qualification that this degree of conclusiveness will attach only to the judgments of foreign countries which accord American judgments reciprocal treatment. This qualification, however, does not find unanimous acceptance by the state courts. Despite the conclusiveness thus recognized there is no merger in the case of the foreign judgment; in other words, the plaintiff is left free to sue on the original cause of action if he chooses. Moreover under Anglo-American law the foreign judgment itself is not a basis of execution; it serves only as a basis for an action, and it is by virtue of a favorable judgment in this domestic action that execution is had. The rule is commonly otherwise under continental law: the

judicial proceeding required being one to obtain permission (*exequatur*) to enforce the foreign judgment. But in foreign countries varying rules obtain on the question of conclusiveness; some grant no recognition at all except as this is determined by treaty, a fact which under existing conditions prevents the recognition of American judgments. Most others require reciprocity—another serious obstacle. Italy was formerly notable for its liberality in recognizing foreign judgments. But the attitude of other European countries has led to a stricter policy on its part. The greatest progress in securing the enforcement of foreign judgments by treaty has been made on the continent of South America.

Interstate recognition of judgments stands on a different basis. In the United States it is governed by the full faith and credit clause of the federal constitution. In the case of the sister state judgment, unlike that of the foreign judgment, there is deemed to be a merger of the original cause of action. But no more than the foreign judgment is it *per se* executory; its enforcement requires the bringing of a new action. As between England, Scotland and northern Ireland the reciprocal enforcement of money judgment is accomplished as a result of simple registration. The same thing is true as between the states of the Commonwealth of Australia under a constitutional provision which closely follows the American full faith and credit clause. A similar method of registration but with provision for notice to the judgment debtor before actual execution governs as between Great Britain and the principal British dependencies. The future therefore may see the present American system of interstate enforcement by action give way to some simpler method, which without cutting off the opportunity for defense within the limited scope allowed by law will open to the creditor a speedier road to realization.

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See JUSTICE, ADMINISTRATION OF, COURTS; PROCEDURE, LEGAL; JURISDICTION; APPEALS; DAMAGES; DEBT; BANKRUPTCY; HOMESTEAD EXEMPTION LAWS; FULL FAITH AND CREDIT CLAUSE, SUMMARY JUDGMENT, DECLARATORY JUDGMENT, CONTEMPT OF COURT. Consult: FOR ROMAN, GERMANIC AND MODERN CONTINENTAL LAW: Sohm, R., *Institutionen, Geschichte und System des römischen Privatrechts* (17th ed. by L. Mitteis and Leopold Wenger, Munich 1923), tr. by J. C. Ledlie (3rd ed. from 12th German ed., Oxford 1907) sects. 46-57; Wenger, L., *Institutionen des römischen Zivilprozessrechts* (Munich 1925); Girard, P. F., *Manuel élémentaire de droit romain* (8th ed. by F. Senn, Paris 1929) bk. iv; Calamandrei, P., *La casazione civile*, 2 vols. (Milan 1920) vol. i, sects. 5,

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JUDICIAL INTERROGATION, or the questioning of witnesses by the judge for the purpose of investigating the evidence in a particular case, is characteristic of continental as opposed to Anglo-American procedure. In the civil procedure of both systems investigation by the judge is relatively unimportant, since evidence is presented largely by the parties to the suit in accordance with the concept that the civil case involves the rights of the litigants rather than those of the state. This theory has developed historically in the territories influenced by Roman and Germanic law and is accepted with certain qualifications in continental and common law countries. On the continent documentary evidence predominates; when it is supplemented by oral testimony, whether taken before or during the trial, it is the judge who questions the witnesses. In England and even more in the United States this task devolves upon the attorneys, although the judge occasionally interposes questions. But in both types of civil procedure the judge plays a minor role in establishing the evidence.

In criminal procedure in the Anglo-American courts the situation remains the same. A trial is a contest between the accuser and accused in which the evidence is presented, as it was in the classical Roman law, through direct and cross examination of witnesses by the parties or their counsel. In England, although the examination is for the most part conducted by the attorneys, the judge still retains something of the character of the examiner and often questions the witness, but in the United States he has become virtually an umpire, merely restraining the attorneys from violating the rules of evidence. On the continent, however, the judge in criminal cases is an inquisitor, whose duty is not to rely on the prosecution and defense counsel but to investigate the facts of the case for himself. This concept was derived from canonical practice which, although it had originally followed the accusatory theory of the Roman and Germanic law, had by the fourteenth century definitely recognized an inquisitorial process. In this process the judge investigated the case against the suspect, interrogated witnesses and carried on the prosecution. The features of inquisitorial procedure were adopted by

the secular courts. Numerous changes were effected, particularly through the codes, and although the judge is now a supposedly impartial director of criminal proceedings he still maintains his exalted position in trial procedure, particularly in the interrogation of witnesses.

The continental system is best epitomized in the French courts. For major criminal offenses there are jury trials in the *Cour d'assises*, where the president first interrogates the accused, then permits the witnesses to tell their story and questions them on particular points. The indictment has been preceded by an investigation carried on by a *juge d'instruction*, who has examined the accused and the witnesses; the record of this examination is before the president at the trial as a partial basis for his interrogatories. The prosecutor and defense counsel may question the witnesses through the court but in practise they pose very few questions and the admission of these is entirely at the discretion of the court. The judges, however, rarely deny this privilege. In the course of the trial counsel may attempt also to rebut the statements of witnesses. After the taking of testimony the attorneys sum up, the defense having the last word. A similar procedure is followed in general in the correctional courts, where, however, there is more reliance on the record of the investigation before trial.

In the Anglo-American courts the attorneys examine their own witnesses, the testimony consisting almost entirely of answers to specific questions. After the direct examination of a witness there follows the cross examination by the opposing counsel, who attempts to break down the testimony or to change its emphasis. The judge's task is mainly to prevent improper questions and to present the case to the jury.

The supporters of the Anglo-American system contend that it is only by direct examination and by the cross examination, which attempts completely to discredit the witness, that the truth of his testimony can be gauged. On the other hand, the continental system is extolled as one in which the evidence does not depend upon a battle of wits but upon the interrogatories of a trained non-partisan judge and in which the verdict is based upon a more honest presentation of the facts. Both points of view, however, mistake the logical system for the actual process and fail to compare the ultimate results. In practise the idealized Anglo-American direct and cross examination is not a method by which counsel attempts to establish the complete truth

but rather a legal duel in which each attorney tries to distort the testimony to his own advantage. Favorable evidence is easily established by confining the witness to particular questions and is just as easily discredited by a cross examination which emphasizes only certain aspects of the situation and limits the witnesses to mere affirmations or denials. Further direct and cross examination may finally elicit the entire tale but the version is unbalanced and frequently appears, even in the case of honest witnesses, confused and questionable.

In the continental jury trial the president of the court encourages the witness to tell his complete story and then brings out certain points by his questions. While the interrogation of witnesses is usually gentle, in the case of the accused the president often evinces official prejudice and his sarcastic, insistent questioning approximates that of a cross examining attorney. Even in examining witnesses his unconscious prejudices prevent an entirely objective presentation of the testimony. This danger is recognized and in France since 1881 the president has not been permitted to sum up the evidence. The questions suggested by the attorneys may offset the danger of judicial bias but they usually play only a minor part in the trial. The interrogation of witnesses cannot, however, be regarded as an isolated phenomenon. It is only an element in trial procedure, and other factors enter into the verdict in jury trials. If the clever lawyer rather than the just cause frequently wins in England and the United States, he triumphs as often on the continent. The actual evidence, whether established by judge or attorneys, must always be weighed against the final speeches of counsel. The eloquent one-sided interpretation of the testimony and the play upon the emotions of jurors are effective wherever the performance takes place.

In non-jury criminal trials, as in the French correctional courts, the system of judicial interrogation has its obvious advantages. The president of the court is a trained investigator, examiner and judge, theoretically free from prejudice and partisanship. His examination is directed to those points on which he desires further information and no time is wasted in legal battle or in attempts to obscure the issues.

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See: PROCEDURE, LEGAL; EVIDENCE; PROSECUTION; JUSTICE, ADMINISTRATION OF; COURTS; JUDICIARY; JUDICIAL PROCESS; JURY; INQUISITION.

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JUDICIAL PROCESS is the name given to the intellectual procedure by which judges decide cases. It comprehends all the ways of mind, deliberate and subconscious, and all the elements in personality, profession and environment which impel toward judgment. Our knowledge of it is limited and colored by the available materials, which are principally "opinions" in which appellate courts explain their decisions. In contrast with philosophy, in which an abstract argument is driven uncompromisingly forward, and with narration, in which a series of events is objectively recited, the concern of the judicial process is with the general as it relates to the particular. Its position is along the front where legal principles find their application; as case follows case in endless succession, the cause and the law are alike upon trial. In the instance the suits are controlled by the rules; in the aggregate the rules are determined by the suits. In a course of judicial events the abstractions-in-the-books and the tangles-out-of-life are remaking each other.

The character of the judicial process is determined by the institution of litigation. It is a way of inquiry set within arrangements for orderly legal combat. The state indicts a jobless worker for stealing bread, a man sues his neighbor because of unkind words, a buyer attempts to renege from a bad bargain or some other bit of human behavior or misbehavior raises a justiciable question, and an intricate legal conflict is touched off. In the mechanics of trial the witnesses armed with oaths, the attorneys tilting

with verbal and inquisitorial thrusts, the judge applying the rules to the game and the jury returning "the verdict in accordance with the evidence" all attest a combat by law. An elaborate code decrees that a case must present "a cause of action," go before a court which has jurisdiction and move forward by decorous stages; it allows an appeal to a higher tribunal because of "error" in the conduct of the litigation; and it reflects the solemnity with which a serious matter is to be dispatched. As the administration of justice has developed ritual has given way to deliberation, the rigidities of procedure have been softened and the office of judge has shifted from umpire toward inquisitor. But the cluster of judicial usages, in a highly selective manner, still hems in by ceremonial observance "the consideration of the suit upon its merits." In the struggle every convention is a potential obstacle against which the cause may break down; the resourceful attorney may even employ the devices of due process to wear out his opponent's case. At every step, from complaint and answer to definitive judgment, questions may arise which must be presented to a higher court. In the extended process the successive judgments upon procedure determine the issues of substantive law which demand decision. A comparison of the intricate record of a case-in-the-making with the trim lines of the judgment into which it is crystallized reveals the task of turning litigious struggle to the uses of inquiry.

The point toward which the judicial process converges is the disposition of the case. It is the necessity for decision which winnows out the relevant evidence and significant issues and drives the elaborate process of analysis and deliberation to its result. Its definite objective makes the ways of mind of the bench highly selective and very purposive. The act of judgment, stripped of irrelevance and complications, is simple; it is an approval or disapproval of acts of conduct by reference to legal standards. In an elementary case where the facts are beyond dispute, where the act falls into a definite category and where the legal consequences are certain the process of decision follows the easy groove of the syllogism. But as causes crowded with the stuff of life come into the courts, the primary terms of "the law" and "the facts" are found to comprehend intricate and disputed permutations of rules and circumstance. A conflict in testimony, the disputed motives behind behavior, the dubious classification of conduct or the uncertainty

in meaning of the law may broaden the range of judicial attention. A number of issues which differ in kind may have to be cleared up before a perspective is found; the lesser questions may have to be settled as best they can by the weight of evidence, the greater authority or preference for a value or a principle. The key to a complicated suit may be found to lie in some minor issue which for a time eludes search. A judge, finding himself without formal guidance, may be compelled to follow an intuitive reaction or to make an arbitrary choice. The court may have to resort to tricks of the trade to get ahead with its work: "judicial notice" enables relevant information to be used which it would be tedious or impossible to bring in as testimony; "presumption" may force the party against whom it is made to present in rebuttal evidence otherwise inaccessible. It is often convenient and sometimes quite necessary to employ "fictions" to help the argument over a hard place, to round out the picture of the dispute or to serve as a short cut to a proper result. The assumption that the act of the agent is the act of the principal allows damages to be collected by injured persons who might otherwise possess nothing better than valid but worthless judgments; the make believe that the corporation is a person—conveniently forgotten when the fiction does not work—enables a code governing individual conduct gradually to be adapted to the exigencies of an impersonal business unit. The varied tasks and inquiries into which an act of judgment is resolved demand quite different intellectual procedures. Even if the syllogism furnishes the skeleton of the argument and the major and minor premises are poles to which all the processes of mind move, the patterns taken by judicial inquiry present a rich and colorful variety.

In the judicial process the general and the particular inquiries are aspects of an organic whole. The quest is not for "the law" and "the facts" but for the law relevant to the ascertained facts. The legal standard may be found in the lines of the constitution, the provisions of a statute or the precedents of the court. But the written law consists of the lean lines of abstract documents which lack the faculty of self-interpretation. They are phrased as general commands and prohibitions, cover incompletely the subjects to which they relate, fail specifically to provide for all the permutations in conduct which come along and do not anticipate the innovations in circumstance and behavior which social change

brings. Their application to suits at law, filled with the richness, color and pulsing life of humanity, must depend upon the concrete meaning which judges discover in their catholic propositions. In the construction of statutes "the plain and literal meaning of the words," the purpose which animates the acts or "the manifest intent" of their drafters with reference to the novelty before the court may be followed. The interpretation must depend upon the importance of the cause, the interests which are at stake and where the sense of the judge makes justice lie. A jurist refers to "the necessity of having to assimilate into the law the occasional intrusions of the legislature." In a continuing judicial process the constitution and the statutes may offer guidance and impose limits; but it is only as the decrees of the legislature are converted into detailed statements relevant to the affairs of everyday life that they become part of the living law.

Accordingly the quest for legal standards runs into the domain of case law. The applicable principle must be discovered in former decisions or distilled from the run of cases in the reports. If the precedents are in point and unconfused, the mental journey is easy; if they relate merely to similar things or hail from a different age or reveal a conflict of authority, the act of judgment cannot escape discretion. In such instances the discovery of the law involves all the critical awareness which the judge can bring to the task. The substantive issues must be disentangled from impinging questions of procedure, holdings stripped from the enveloping dicta, and the relevancy of past utterance to the bundle of particulars which is the instant case carefully determined. When the comparison reveals more of likeness than of identity, the binding force of the precedent is a matter of imputation. But even when the going is difficult and "therefore's" are most dubiously set down, the process is not blind. The worth of bygone decisions lies as often in the experience which they hold in the mass as in the rules of law they specifically embody. The values at stake may unconsciously impel judges to a choice between rival precedents. The most penetrating of jurists will not ignore an unbroken line of cases which relate to the issue before him; the most literal minded servant of "the law" cannot be completely oblivious to the difference it makes that the decision goes one way or the other. A noted jurist has said that "logic is not to be ignored when experience is silent"; and the line, "the life of law is not logic but experience," has become

classic. At its tightest logic is the dominant element in the judicial process; at its loosest the necessary resort to analogy may become naïve and unreal. In case law the principle must of necessity be sought out among the precedents, but the way of search has no simple chart.

In their quest of "the law applicable to the case" jurists have developed their own technology. Every tool in "the legal smithy" has its use and its hazard; the quality of the product depends upon the skill of the judicial workman. The web of the law is woven with words, yet verbal symbols never carry meaning with precision. When a case is decided, it is not enough to set down the specific holding; the behavior in question must be appraised with reference to a universal standard. When a later cause comes along, the overgeneral words may be found to comprehend particulars they were never meant to include. Inasmuch as words do not cover tidy little squares but each possesses its own conglomerate domain, it is easy to slip from one meaning to another; a proposition set down to broaden the law may, by so slight a change as the unconscious interpolation of the word "only," be used to narrow it. The resort to analogy has its own peculiar pitfalls: a general term must frequently be chosen as a logical nexus between precedent and instant case; the category may be only one of a number which comprehend the two particulars and its inconsiderate selection may contain an undistributed middle. Thus the concept "brokerage" has been carelessly used to apply to employment agencies a rule of law contrived for the merchandising of theater tickets. The word "wousin" has been invented as a name for a thing which appears to be an autonomous entity but is a permutation of particulars which may be put together in innumerable ways. Verbal currency passes most uncertainly from country to country and between the generations. As a result precedents may be made to compel where they were never intended to apply; but "ignorance is a great law reformer," and judges often assume that their predecessors were men of sense and reason such as themselves and endow with current meaning the rules by which they are bound. In an organized combat the art of logomachy is not to be escaped, and judges must be wary of attorneys who take advantage of the undefined frontiers between conceptual provinces to give to abstract words a little push in the right direction. In probing into the utterances of others and in writing down his own decisions the judge who knows his craft proceeds warily; he

regards words as the necessary instruments of judgment and communication rather than as fixed categories which automatically claim their instances.

Nor are "the rules of law," with which jurists ply their trade, automata which strip from judgment its choice. They are often mere formulae-for-decision, providing terms which are receptacles for facts and within which the conflict of values may be resolved. The appraisal of carelessness in conduct by the standard of "the reasonable man" permits a consideration of the circumstances and compels judges to use their common sense. The principle which bases liability upon personal fault allows protection to be extended by a broadening of the latter concept. In the flexible propositions by which human behavior is legally appraised the nouns and the verbs may pronounce a doom from which the adjectives and adverbs grant a chance of escape. An intent may have to be added to an act to constitute a tort or a crime; unless the deed was "wilfully and wantonly" or "negligently" done the perpetrator avoids the penalty. The prefix "quasi" and the adjectives "implied" and "constructive" are habitually employed to extend the law of property or contract or warranty or what not into the borderland. A rule which distinguishes between the essence of an act and its incidence may invite the judge to an expression of his own preference: the acts of workmen on strike are often pronounced innocent or criminal as they are adjudged to be prompted by the worthy desire of "benefit to themselves" or the unworthy motive of "harm to others." In cases involving acts of negligence, terms of contract and equities in property, tradition demands that the specific events out of which litigation has emerged shall be passed in review. A realization that the issue between "the taking of property" and "the exercise of the police power" depends upon the measures at work has made of the Fifth and the Fourteenth amendments formulae of constitutionality; it has led to the appearance of "the factual brief" and to a consideration of social legislation upon its merits. As case follows case and the points along a line are gradually pricked out, a richness of meaning is given to the principles. But with human conduct in a changing culture as their domain rules of law can never be made to displace practical judgment.

In the judicial workshop even so necessary a device as *stare decisis* has only a limited use. As cases grow in number and variety they become a storehouse of knowledge and understanding,

representing the cumulative experience of the bench in resolving the tangles in human affairs. For the ordinary cases with which the court monotonously busies itself the precedents in point are sufficient for judgment. But as the novelty in emerging social life gradually creeps into litigation, their use has its dangers. A term may abide after its meaning has departed and the unfamiliar may appear behind the mask of the familiar. "Every judgment has its generative power" and tends to beget unlike things in its professed image; its "directive force for future cases" may carry it further than the reasons which brought it into existence would allow. It is on occasion essential, if the law is to be kept living, to use rather than merely follow precedents; but every revision of the domain of a principle and every addition in meaning to a concept involves an act of discretion. Even cases which appear alike may have essential differences, and the technique of distinction is born of judicial experience as a check upon the uncritical use of precedents. The insistence by a court upon *stare decisis* when the former decision turns out to have been erroneous is a vestige from days of universals and absolutes. It is likely to bring confusion and delay even when applied to a statute, where the judicial mistake may be rectified by the legislature; it is likely to perpetuate an error and even block social experimentation when employed in constitutional law, where the judiciary has the last word. In the latter domain a ruling is now and then frankly overruled. More often the innovation is hidden behind a formal distinction and ingenious rhetoric permits the court alike to defer to a former judgment and to serve the current occasion.

As bench succeeds bench and suits are endlessly turned into judgments, the law grows. The flexibility in judicial technique permits the appearance of elements of novelty; the formal appearance of rigidity masks the fact of change from the eyes of the uninitiated. In the everyday case, where a definite rule is applied to known facts, the law is made rather than in the making. But even here if the principle be followed back through the precedents, its source will be discovered in a conscious choice. It has, like all the rules which the reports contain, been compounded out of prevailing ideas, common sense, conventional standards of right and wrong and the kindred stuff of folk thought. In fact the creative, as against the mechanical, task of the jurist is to domesticate to legal use the sanctions and tabus imposed upon conduct by social usage.

In an early case involving industrial accident a British judge argued that the servant knew the perils of the trade and the careless habits of other employees better than did the master and denied recovery. An American jurist shortly afterwards chiseled the common sense of English squirarchy into the clean cut "fellow servant" and "assumption of risk" doctrines. These were in time abstracted from the regime of handicraft, set down as universal propositions and applied to conditions of machine industry which could never have been in the contemplation of their authors. The very process of abstraction conceals the origin of a rule in prevailing sense and custom and gives it a dominion far wider than it could win by an appeal to contemporary reason. It passes from concrete holding to abstract precedent, to rule of law; it may require the startling challenge of manifest injustice to secure its reconsideration.

As with the origin so it is with the development of a doctrine. As a series of cases reflects changing conditions, the law responds certainly, even if slowly and stubbornly, to newer juristic necessity. The change may be logical or adventitious, systematic or disorderly. On occasion a court may announce a new principle, or the legal sport may be concealed by dwelling upon the novelty of the facts in a "case of first instance." More often a gradual departure is made from an outworn doctrine: on the surface the rule seems to acquire detailed meaning through a process of deduction; beneath it makes its truce with emerging circumstance and sense of right. The devices and procedures deliberately or intuitively employed by judges are sufficient for the legal emergency. The law has never allowed justice to be completely subordinated to legalism; it has always professed to save the unusual cause. It can, when need commands, set down an "exception"; but each exception is an invitation to another and a multiplication of instances will transmute an imperative into an elastic formula. A shift in juristic values may even elevate the exception into the position of the rule. The principle of "no liability without fault" first appeared as a device to save unusual causes from the older doctrine which held a man to "absolute" responsibility for his acts; the reverse trend toward "strict liability" represents the accommodation of the law of torts to an impersonal society. In the era of handicraft when its maker sold an article to its user the formula of "privity of contract" was an adequate expression of the rights of the parties. When middlemen were



interposed between producer and consumer it became irrelevant: the intermediary had a technically valid "cause of action" but no complaint; the user had a complaint but no cause of action. The problem of recovering the older protection is being solved by the resort by various courts to such different concepts as negligence, fraud and implied warranty. Principles may be converted into open propositions or even nullified by the invention of counterrules. Even before statutes upon the subject appeared, the employer's defenses of "fellow servant," "assumption of risk" and "contributory negligence" were being matched by rules which made even subofficials "vice principals," required the master to provide "a safe working place" and imposed upon him the "non-delegable duty" of instruction.

In a sequence of cases the difference between holding and holding may be small, yet the judgments at the beginning and the end may lie far apart; thus the law grows through illogical increments too small to be detected in the instance yet clearly evident in perspective. The weight of precedent, the fortuitous appearance of cases, the bondage of judicial technique to litigation, the disorderly and almost leaderless army of judges, arrest and confuse the work of restatement. A cross section displays only a clash of values and a confusion in holdings; a genetic account is required to reveal the older moorings, the trends manifest but not realized and the direction of development. In its longer sweep the appearance of the judicial process belies reality; behind an affectation that the law is static, complete and abiding the judge performs his social office of squaring the necessity which time and change bring with the established law of the land.

Yet the jurist discounts or even disclaims his creative work. Although the great corpus of the law is the handiwork of the judiciary, the emerging decisions are set down as mere applications of preexisting rules. The rhetorical usage reflects a substantial truth, for the continuing bench rather than the individual judge is the dominant agent in the process. The original touch in the single judgment—the shading of a word, a choice between two rules, the giving of a little neater fit to a precedent, an implication of meaning not evident until afterwards—may demand careful search. Even when a significant decision "makes judicial history" it is "not the judge who speaks, but the law which speaks through him." This stage play is almost a necessity; jurists, whose occupation holds far more

than its proper share of thankless tasks and dirty work, are more comfortable in having authorities with which to support their decisions, and the prestige of courts is strengthened by a recourse to "the law" with which "to beautify what may be disagreeable to the sufferers." The world of absolutes and fixed categories and the mechanistic conception of the universe still linger in common sense; their counterpart in Aristotelian logic continues to dominate the forms of judicial expression. It has required the notion of growth, a skeptical attitude toward universals and the discipline of the case method to bring an experimental attitude into law. The idea of judgment as "hypothesis" is gaining at the expense of "eternal verity"; but even today the recognition of trial and error is partial. Compromises between authority and necessity result from the successive formulations of the law. As conditions and opinion become stable, the law tends toward organic unity; at the impact of an advancing culture it becomes disorderly. In a society which is ever emerging relevancy must be bought at the expense of certainty; a tolerable compromise between desirable values is all that can be expected. An experimental character can be given to a legal code only by jurists; their work lies along the front where the wisdom of the past is applied to current life and is remade by it. It is useless to inquire whether judges should or should not make law; the fact and the necessity are alike inescapable. The goodness or badness of judicial lawmaking lies in the skill with which members of the bench ply their trade.

As the judicial process runs ceaselessly on it leaves a distinctive record. A usage prevalent among appeal courts requires the way of decision to be resumed in a written statement. It is impossible to say just when "the opinion" came into vogue; its analogue is to be found in Thomas Aquinas, in the Justinian code, in the earliest scraps of legal writing; in the common law its germ is to be found in Bracton and the *Year Books*. In days when judges were wise but not necessarily literate reasons orally recited were passed on by the treacherous memory of scribes; a jurist fearing for his repute complained that "the reporters will make us out to posterity for a passel of fools." As case law developed, the resort to writing became a guaranty of the authenticity of holdings. The dignity of the jurist's office entitles him to his speech; in England when judges sit en bloc the brethren usually express themselves seriatim; in America the modified usage of "the opinion of the court" generally pre-

vails. It is idle to seek the ultimate "why" of so essential an instrument; in the administration of justice it serves the multiple purpose of helping the bench to be critical of its own intellectual processes, keeping lower courts in order, announcing legal standards for acceptable human conduct, extending the courtesy of an answer to arguments which do not prevail and affording an opportunity to justify a judgment. The opinion is indispensable to case law, has made an institution of the judicial process and gives continuity to the development of legal doctrines.

The usage of dissent is an expression of the independence of the judiciary. It has long seemed unwise to leave important causes to the judgment of a single individual; to insure due deliberation and wise decision they are referred to a bench of judges. To each, as of right, independent judgment has been accorded and in case of division the majority prevails. The dissenting opinion was not deliberately contrived; it is a by-product of this arrangement. After a case is heard the members of the court may fail to agree in reasons or upon the result. A period of deliberation may reduce these differences but in spite of all effort there may not be a meeting of minds. The spokesmen for the court and for the minority then prepare and exchange tentative drafts of their opinions, and frequently each document is rewritten to take account of the argument of the other. Many jurists regard the public expression of dissent as a duty, and few members of the bench question the value of the usage. A knowledge that each judge is free to inquire, to act and to speak for himself helps to assure lawyer, litigant and the public that all relevant facts and issues will be considered. As a result the bench does its work under constant self-criticism. The spokesman for the court is forced to choose his positions with care, to draw his conceptual lines sharply and to keep his holdings from becoming overabstract. The law which comes to prevail is a far more serviceable agency of social control because of the cumulative effect of challenge. The solitary judge is most likely to sense the need for legal restatement; the path of constitutional law has often been blazed in dissent. There is little evidence that the independent expression of views by individual members weakens the authority of the court. The majority opinion and the dissent are set down side by side in the record, where they can be read, studied and compared. If truth has in itself the capacity to prevail, the law reports accord it an opportunity.

The law reports, crowded with opinions, are

the treasure house of the jurist's art. The technique of judgment is of its own kind. Unlike the poet, the historian or the essayist the judge cannot listen to the promptings of his own heart, choose the subject upon which he would write, say in his own manner all that is on his mind and follow his interest to a fresh theme. In saying his say the place of the jurist is in the institution of the judiciary; he cannot escape its usages, must employ its language and tools and is bound by its limitations. He is a member of a court and his studied utterances are an incident in the disposition of litigation. He cannot speak until the appropriate cause comes along; he can say only so much as the issues allow; he must wait for a suitable opportunity to continue. Even when he is interpreting the constitution he addresses himself not directly to public policy but to the questions of law into which it has been transmuted. In justice as in every craft the artist leaves his distinctive mark upon his work. Even when rules compel and one cause is much like another, the manner of the judge appears in the interstices of opinion. In cases of consequence he leaves the indelible stamp of his personality upon his paragraphs. His manner of utterance differs as he is announcing a judgment or recording a dissent. When he is the voice of the court his is usually a compromised statement, often marked by "the veiled phrase, the blurred edge, the uncertain line." It represents not what any member would like to say but what all who concur are willing to accept. In the dissent, on the contrary, the jurist expresses his unfettered opinion. The cause has been lost, further deliberation would only delay judgment; "his voice is pitched to a key that will carry through the years." He may elect to include a particular within a concept, to extend a developing doctrine another step, to round out the law by borrowing customs of the people, to remake rules to serve a current justice or to combine elements into a distinctive method; but in the practise of his trade he cannot escape being himself. He must recognize both legal rule and social value; and where they inevitably clash he must effect the best reconciliation that may be between them. The judge must become the statesman without ceasing to be the lawyer. The quality of his work lies in the skill, intelligence and sincerity with which he manages to serve two masters.

It is impossible to contrive a formula for so delicate and evasive an art. The procedure differs from case to case; the manner of work varies from judge to judge. It is not the cause but what jurists

discover in the cause—a mere dispute between individuals, a standard of conduct for an activity, the domain of a legal principle, the definition of a public policy—which holds the key to decision. The majestic arguments of judges may be directed to inconsequential suits; the battles of abstractions are always dramatized in a concrete struggle between human beings. The factors which impel the mind toward judgment present no standard combination. The jurist is a craftsman in the law; he is learned in its lore, responsive to its values, habituated to its discipline; constitution, statute and precedent must be compulsions toward decision. But even within legal formulations the objectives to be served may clash with the rules in which they find immediate expression. And since judges are men as well as lawyers, no line can separate professional from general equipment. The law itself is but an aspect of the world that lies within the jurist's head; the judicial process but the biting edge of a way of mind which stands but a little exposed. Out of the depths of personality "forces" which jurists "do not recognize and cannot name"—"traditional beliefs, acquired convictions, an outlook on life, a conception of social end"—keep "tugging at them." It is impossible for the judge to escape his own universe of fact, preference and conviction; the intangibles in their own subtle way will usurp a role in the argument. The more novel the issue or the larger the interests at stake, the greater will be the influence of common sense, of the climate of opinion, of the "stream of tendency" which "gives coherence and direction to thought and action." Jurists differ in sensitiveness to pleas, facts, legal law and social policy; they respond variously to the conflicting values which a suit presents—the rightness of the cause of a party, a principle which should prevail in spite of the injustice in the instant case, the need to extend law and order into a turbulent domain, the limitations of the judiciary as an agency of control. The interest and the adventure lie in the parts played in the drama. It is not the impulses-to-judgment but the after-thought-of-rationalization which takes its way through the reports. Here as in other domains of life the emotions play behind the scenes and leave the show to reason.

There is in fact something universal about the judicial process. It seems to be unique, because courts keep records which are read and criticized. If business men, university faculties, baseball players or débutantes were forced to set down

the good reasons for the decisions which make up their streams of conduct, the result would be a crude miniature of the judicial process. In law the rationalization of judgment has become a convention; about it customs, traditions, ways of thought, modes of expression, have crystallized into a cluster of flexible usages. It represents in a highly artificial form the act of personal judgment; it differs from the ordinary decision of everyman about an everyday matter as a critical intellectual process differs from a half intuitive experience. If the ways of jurists seem unusually prone to inconsistency and error, it is because the way of abstraction is made hard by unanticipated causes. If the categories of statistics or the methods of philosophy or the principles of economics were continually tested by cases fresh from life, the outward integrity of these disciplines would be seriously disturbed. At present we know little more of the craft of judgment than can be gleaned from the words and between the lines of the reports. An increase in understanding must await materials concerned with and a psychology relevant to deliberation in process. But at this point the quest of the "how and why judges decide cases" runs into the larger search for the ways of mind.

WALTON H. HAMILTON

*See:* LAW; COURTS; JUSTICE; JUDICIARY; JUDGMENTS; JURISPRUDENCE, RULE OF LAW; CASE LAW; CUSTOMARY LAW; CODIFICATION; LEGISLATION; CONSTITUTIONAL LAW; JUDICIAL REVIEW; FICTIONS; LEGAL PROFESSION AND LEGAL EDUCATION.

*Consult:* Holmes, O. W., Jr., *The Common Law* (Boston 1881); Cardozo, B. N., *The Nature of the Judicial Process* (New Haven 1921), and *The Growth of the Law* (New Haven 1924); Allen, C. K., *Law in the Making* (2nd ed. Oxford 1930); Frank, Jerome, *Law and the Modern Mind* (New York 1930); Goodhard, A. L., *Essays in Jurisprudence and the Common Law* (Cambridge, Eng. 1931) chs. i-iii; Mr. Justice Brandeis, ed. by Felix Frankfurter (New Haven 1932); Würzel, K. G., *Das juristische Denken*, tr. by E. Bruncken as "Methods of Juridical Thinking" in *Science of Legal Method*, Modern Legal Philosophy series, vol. ix (Boston 1917) p. 286-428; Vaihinger, Hans, *Die Philosophie des Als ob* (5th-6th ed. Leipzig 1920), tr. by C. K. Ogden (New York 1925); Llewellyn, K. N., *The Bramble Bush* (New York 1930); Powell, T. R., "The Logic and Rhetoric of Constitutional Law" in *Journal of Philosophy, Psychology, and Scientific Methods*, vol. xv (1918) 645-58; Oliphant, Herman, "A Return to Stare Decisis" in *American Bar Association Journal*, vol. xiv (1928) 71-76, 107, 159-62; Cohen, Morris R., "The Place of Logic in the Law" in *Harvard Law Review*, vol. xxix (1915-16) 622-39; Radin, Max, "Statutory Interpretation" in *Harvard Law Review*, vol. xliii (1929-30) 863-85; Dickinson, John, "The Law behind Law" in *Columbia Law Review*, vol. xxix (1929) 113-46, 285-319; Hutcheson,

J. C., Jr., "The Judgment Intuitive, the Function of the 'Hunch' in Judicial Decisions" in *Cornell Law Quarterly*, vol. xiv (1928-29) 274-88; Arnold, Thurman, "Rôle of Substantive Law and Procedure in the Legal Process" in *Harvard Law Review*, vol. xlv (1931-32) 617-47; Green, Leon, "The Duty Problem in Negligence Cases" in *Columbia Law Review*, vol. xxviii (1928) 1014-45, and vol. xxix (1929) 255-84; Nelles, Walter, "A Strike and Its Legal Consequences" in *Yale Law Journal*, vol. xl (1930-31) 507-54; Hamilton, Walton H., "The Ancient Maxim Caveat Emptor" in *Yale Law Journal*, vol. xl (1930-31) 1133-87; Henderson, G. C., *The Position of Foreign Corporations in American Constitutional Law*, Harvard Studies in Jurisprudence, vol. ii (Cambridge, Mass. 1918).

JUDICIAL REVIEW is the power of courts to pass upon the constitutionality of legislative acts which fall within their normal jurisdiction to enforce and the power to refuse to enforce such as they find to be unconstitutional and hence void. Together with its juristic product, a body of "constitutional law," judicial review is today the most distinctive feature of the American constitutional system; for while it has been imitated to some extent in other constitutions, its foreign variants have nowhere attained anything approaching the importance of the original. Three branches of judicial review should be distinguished: first, the power of all courts to pass upon the validity of acts of Congress under the United States constitution—"national" judicial review; second, the power and duty of all courts to prefer "the supreme law of the land" as defined in article vi of the constitution over all conflicting state constitutional provisions and statutes—"federal" judicial review; third, the power of state courts to pass upon the validity of acts of the state legislatures under the respective state constitutions—"state" judicial review. The most important consideration for public law is the ultimate role of the Supreme Court of the United States in the first two closely related fields. In this article the emphasis will be upon the judicial review of legislative acts. The growth of administrative bureaus and commissions has raised the problem of the judicial review of administrative acts and decisions, but in so far as this raises unique questions it will be found discussed under ADMINISTRATIVE LAW; COURTS, ADMINISTRATIVE; CERTIORARI; MANDAMUS; STATE LIABILITY.

By the official theory [*Federalist*, no. 78; Chief Justice Marshall in *Marbury v. Madison*, 5 U. S. 137 (1803); *Adkins v. Children's Hospital*, 261 U. S. 525, 544 (1923)] judicial review is not a specifically delegated power, although there are phrases of the constitution which clearly con-

template its existence; rather it is the inevitable outcome of the power of the courts in deciding cases to interpret the law, of which the constitution is part. More explicitly the doctrine of judicial review comprises the following propositions: that the constitution is law in the strict sense of a body of rules known to and enforceable by courts; that it is law of higher obligation than any legislative act which purports to have been made under its sanction; that consequently the court must in case of conflict between the constitution and a legislative act determine the rights of parties in accordance with the former; that by the principle of the separation of powers a judicial interpretation of the standing law and so of the constitution is final for the determination of the case in which it was rendered.

The criticism to be made of this theory is that while it accounts sufficiently for the power of the court to decide cases by rules drawn directly from the constitution, it does not account for the fact that such rules are generally regarded as binding the legislature in the shaping of future legislation. To explain this, the essential feature of judicial review, one must fall back upon a somewhat mystical notion of the relation of judges to law. Others may have opinions of what the law is, but judges are presumed to know the law. They are its mouthpiece and the law is not changed by their utterance of it. Thus judicial review conserves the constitution; and the judicial version of it is the authentic constitution. Nevertheless, there have been those who have dissented from this view—among others Madison, Jefferson, Jackson and Lincoln. Thus Lincoln while admitting that the decision of the Supreme Court in the *Dred Scott* Case was final for that case denied that it established a rule which should control Congress henceforth. And the history of the period of the Civil War and reconstruction affords ample proof that there can be times when Congress will consider itself warranted in ignoring the judicial gloss upon the constitution and in acting upon its own independent reading of the basic document. Even today judicial review is perhaps not an altogether closed system.

The effort has been made, but unsuccessfully, to trace judicial review to colonial institutions. The colonial charters did, it is true, generally stipulate that the local legislative power as that of an inferior corporation must keep within the common law; and in the case of *Winthrop v. Lechemere* the Judicial Committee of the Privy Council disallowed in 1728 an act of the Con-

necicut assembly which abolished the rule of primogeniture in that colony on the ground of its transgression of this well recognized principle (Andrews, C. M., "The Influence of Colonial Conditions as Illustrated in the Connecticut Intestacy Law" in Association of American Law Schools, *Select Essays in Anglo-American Legal History*, 3 vols., Boston 1907-09, vol. i, p. 431-63). This alleged "precedent" for judicial review was, however, totally unknown to the authors of the American constitutional system, who far from regarding the first state legislatures as continuing the colonial assemblies held them to be "sovereign" lawmaking bodies after the model of the British Parliament.

Unquestionably the *fons et origo* of all talk and all thought about judicial review in the United States is to be found in Lord Coke's famous dictum pronounced in 1610 in Dr. Bonham's Case (8 Rep. 107, 118) that "the common law will controul acts of Parliament, and sometimes adjudge them to be utterly void" as "against common right and reason." One hundred and fifty years later James Otis invoked this dictum in his argument in the famous Writs of Assistance Case [Quincy's Mass. Rep. 469-85 (1761)], and from that time forward similar sentiments were frequently voiced by colonial advocates.

The early state constitutions did not, however, at the outset contemplate judicial review, having been framed under the influence of the Blackstonian doctrine of legislative sovereignty. This principle cut in two directions. In the first place, it asserted for the legislative body the predominant position in the constitution—indeed it virtually put all the powers of government at the disposal of the legislature. In the second place, it swept the boards clear of all categories of "law" except positive law. "Higher law," "law of nature," "law of God"—these might still be termed law by courtesy but the only true law was that which had the express or tacit sanction of the sovereign legislative body. In this situation for an ordinary court to undertake to "defeat the intent" of an act of the legislature was, as Blackstone pointed out, little short of revolution, and the success of such an attempt would spell the end of the constitution (1 Comm. 91).

How then did judicial review come finally to achieve a logical foothold in the state constitutions? The answer is to be found in the altered character which came gradually to be attributed to these instruments of government. At the outset they were regarded as a species of social

compact, the product of revolution and of the inalienable right of men to determine their political institutions. But presently, as the process of constitution making became regularized, they took on a new aspect, that of a higher form of statute emanating not from the sovereign legislature but from the sovereign people. Legislative sovereignty gave way to popular sovereignty.

The first suggestion of judicial review as a constitutional procedure did not, however, wait upon its rationalization, although that succeeded with reasonable promptitude; it was provoked by the gross abuse of their powers by many of the early state assemblies. In relation to "judicial power," "legislative power" was at this date undefined; and in the general absence of courts of Chancery it became a frequent practise in many of the states for the legislature to intervene in the proceedings of the ordinary courts, annulling or modifying their judgments, reopening private controversies and even determining them by "special acts." When values based on paper currency collapsed after the revolution, the majority of the legislatures fell under the control of the large farmer debtor class and began to pass laws for its relief. At the same time they showed themselves utterly careless of the treaty obligations of the Confederation, which of course was entirely dependent upon them for the effectuation of its exiguous "powers." For all these reasons the leaders of society gradually became convinced that means must be provided for curbing the state legislatures in the interest both of vested rights and of the maintenance of the union; and from this conviction resulted in due course the gubernatorial veto, judicial review and the constitution of 1787 itself.

The first case approximating judicial review in this country seems to have been the New Jersey case of *Holmes v. Walton* decided in 1780. Here the New Jersey Supreme Court refused to enforce an act of the legislature of the state by which certain criminal prosecutions were made triable by a jury of six on the ground that it transgressed the provision in the state constitution for "trial by jury." Although the decision met with considerable popular protest, the assembly soon modified the act so as to require the trial judge to grant a jury of twelve upon the demand of either party (Erdman, C. R., Jr., *The New Jersey Constitution of 1776*, Princeton 1929, p. 91-92). Four years later Alexander Hamilton, in arguing before the Municipal Court of New York City the case of *Rutgers v. Waddington*, assailed a recent act of

the legislature of that state as contrary to principles of the law of nations, the treaty of peace with Great Britain and the Articles of Confederation; and although the Municipal Court did not venture to pronounce the act "void," it accomplished the practical results of so doing by the construction which it put upon the act. The real importance of Hamilton's argument, however, lies in the fact that two years later it prompted John Jay, then secretary for foreign affairs, to suggest to Congress that it recommend to the several state legislatures the repeal of all acts contrary to the treaty of peace in general terms which would leave to the local judiciaries the decision of all cases arising under the treaty according to the intent thereof, "anything in the said acts . . . to the contrary notwithstanding." Congress so recommended in April, 1787, only a month before the meeting of the Philadelphia convention, which was soon to elaborate "the supremacy clause" of article VI of the constitution. Meantime in 1786 the Rhode Island Supreme Court had in the case of *Trevett v. Weeden* employed the subterfuge of "construction" to invalidate a paper money law of that state; and in May, 1787, the North Carolina Supreme Court in *Bayard v. Singleton* (1 Martin 42) pronounced "void," without evasion, an act of that state on the ground of its violation both of the state constitution and of the Articles of Confederation. Furthermore in counsel's argument in the former case as well as in Iredell's defense of the decision in the latter case as it appeared in the newspapers the main postulates of the doctrine of judicial review were developed along the very lines of Hamilton's later argument in the *Federalist* (no. 78) and of Marshall's opinion in *Marbury v. Madison*.

Despite these developments when the Federal Convention met judicial review was not as yet an established institution in a single state in the union. Indeed the mere suggestion of it had in most instances elicited condemnation which was fully as strong as its support, condemnation based for the most part on Blackstonian premises. Nor did the Virginia plan, which furnished the basis of the convention's early proceedings, evidence the least awareness of judicial review. By its provisions Congress was to prevent the states from violating the constitution, while Congress in turn was to be kept within bounds by a council of revision. Yet as debate on these proposals developed, judicial review as a logical and desirable alternative (along with the president's conditional veto power over acts of Con-

gress) was thrust forward more and more insistently, with what outcome is to be seen in the "supremacy" clause and the opening words of the second section of article III defining "the judicial power of the United States." By the former the state judiciaries are made the first line of defense of the constitution, of "the laws of the United States made in pursuance thereof" and of treaties of the United States against all conflicting state laws and constitutional provisions; while by the latter basis is laid for the appeal of all cases "arising under this Constitution" to the national judiciary and so ultimately to the Supreme Court. The latter phrase is moreover a textually adequate description of cases in which the question of the validity of congressional legislation is raised, although whether it was inserted with this understanding of it appears at least debatable.

What can be said with some confidence, on the basis of statements made in the convention, in the state ratifying conventions and in the *Federalist*, is that the leading members of the convention endorsed, at least at that period, the idea that the Supreme Court would have the power to pronounce "void" under the constitution an act of Congress no less than an act of a state legislature; and in the later numbers of the *Federalist* Hamilton discloses a rapidly expanding appreciation of the potentialities of this prerogative (cf. nos. 33, 78 and 81). The Judiciary Act of 1789, in the framing of which several of these same men had a hand, affords further evidence of like purpose, notably in the provision which it made in section 25 for final appeal to the Supreme Court of all decisions of state courts disallowing claims founded upon the constitution, acts of Congress or treaties of the United States. Finally, in 1795 we find the Supreme Court passing upon the constitutionality of the "carriage tax" of the previous year in a test case devised with the approval of Congress.

Judicial review became "constitutional law," indeed the corner stone of constitutional law in the American sense, in the decision by the Supreme Court in 1803 of the famous cause of *Marbury v. Madison*. Marbury was prosecuting a claim for an official commission under section 13 of the Judiciary Act of 1789, which in general terms authorized the Supreme Court to issue writs of mandamus to officers of the United States. The court in the person of Chief Justice Marshall interpreted this provision as attempting to vest it with "original jurisdiction" in a

type of case not enumerated in article III and so as void. This reading of section 13 in the light of later cases was erroneous and the view taken of the constitutional provision was at least questionable, although it had been earlier asserted (3 U. S. 321, 327) and has since been adhered to. The case in fact smells strongly of powder, for the battle between the chief justice and President Jefferson was already on. It is all the more striking therefore that the part of the court's opinion dealing with judicial review escaped Jeffersonian criticism, while other features of it certainly did not. Although the Supreme Court did not pronounce another act of Congress void until the *Dred Scott* Case fifty-four years later, between 1803 and 1857 it heard argument and passed upon the validity of a number of acts of Congress which it sustained [17 U. S. 316 (1819); 19 U. S. 264 (1821); 22 U. S. 1 (1824); 22 U. S. 738 (1824)]. Meantime the establishment of "state" judicial review was proceeding steadily; Rhode Island, which did not discard its colonial charter until 1842, was the last state to receive it. At no time, however, have the various state judiciaries been equally aggressive in pressing their pretensions. Prior to the Civil War more legislative acts succumbed to judicial review in New York alone than in all the remaining states of the union combined. "Federal" judicial review was finally put on a secure basis by Marshall's decision in 1821 in *Cohens v. Virginia* (19 U. S. 264), sustaining against an attack based on states' rights premises the constitutionality of section 25 of the Judiciary Act of 1789.

Dating from the earliest establishment of judicial review the courts have attempted the formulation of various restrictions upon the power. Some of these are corollary to the notion of judicial review as an outgrowth of ordinary judicial function, as, for instance, the rule that the power may be exercised only in connection with the decision of genuine, not "moot," cases. Others, on the contrary, represent a departure from the logic of the same concept and spring from a desire on the part of the courts to avoid collision with the political branches of the government, as, for example, the extremely vague rule that the courts will not decide "political questions"—whatever those may be. Another restriction is the rule, first stated by Chief Justice Marshall in 1834 (*Briscoe v. Commonwealth's Bank of Kentucky*, 33 U. S. 118, 122), that the Supreme Court would not "except in cases of absolute necessity" "deliver any judg-

ment in cases where constitutional questions are involved" in which a majority of the entire bench did not concur, although ordinary judicial functions are discharged by a majority of a quorum of the bench. Probably the maxim which is most frequently encountered as governing judicial review is the statement that all reasonable doubts on the constitutional issue must be resolved in favor of the legislature. Actually of course a considerable amount of doubt necessarily attaches to almost any question of law which is prosecuted by competent counsel as far as the United States Supreme Court; nor in fact are there many constitutional issues of moment in the determination of which the court is not required to exercise, in Justice Holmes' words, "the sovereign prerogative choice." Likewise little importance is to be ascribed today to the maxim that no legislative act may be judicially disallowed on the ground of its being opposed to "natural law," "natural rights" and the like—in short, on any other than strictly constitutional grounds. For while this maxim may have temporarily constricted judicial review, it certainly has not done so permanently. Today the most extremely latitudinarian results of extra-constitutional limitations on legislative power are freely available to all courts of the United States in the form of modern conceptions of "liberty" and "due process of law." Lastly, it may be mentioned that the Supreme Court in contrast with many of the state courts seems ordinarily to have discouraged taxpayers' suits as well as those in which the aggressive party has disclosed only the general interest of seeing the constitution observed.

In short, the scope of judicial review and consequently its importance as a governmental institution depend very little upon the rules which the courts have laid down from time to time in ostensible definition of it. Rather it is at any time a function of the entire structure of "constitutional law," which in turn reposes in the main, so far as the national constitution is concerned, upon the interpretations which the Supreme Court has come to affix to three or four brief phrases thereof. Regarded from this angle the history of the reviewing power of the Supreme Court has been as a whole one of pronounced aggrandizement, especially in the "federal" field, with the result that today the court enjoys a supervisory role which is quite without statable limits, particularly in relation to state legislative power.

First, however, attention should be drawn to

the exact opposite of the above mentioned development, since in four notable instances the court adopted views of the constitution which had as their considered purpose the minimization of its reviewing power: its decision in the early case of *Calder v. Bull* [3 U. S. 386 (1798)] confining the constitutional prohibition upon *ex post facto* laws to retroactive penal laws; its decision in *McCulloch v. Maryland* [17 U. S. 316 (1819)] broadly construing Congress' legislative discretion under the "necessary and proper" clause; its decision shortly after the Civil War in the *Slaughter House Cases* [83 U. S. Wall. 36 (1873)] rendering nugatory the "privileges and immunities" clause of the Fourteenth Amendment, because, as it recognized, the alternative construction would have rendered it henceforth "the perpetual censor" upon all state legislation; its decision in *Munn v. Illinois* [94 U. S. 113 (1877)], later reversed on this point, that the question of the "reasonableness" of charges set by a "business affected with a public interest" was one subject for final determination by legislative authority.

Of the holdings which have contributed to give the court's reviewing power its present dimensions in the "federal" field the following are outstanding: the interpretation under Marshall of the "obligation of contracts" clause as applying to public grants, including corporate charters [*Fletcher v. Peck*, 10 U. S. 87 (1810); *Dartmouth College v. Woodward*, 17 U. S. 518 (1819)]; the interpretation of the "commerce" clause, which was also virtually established before the Civil War, as a prohibition upon state power [*Cooley v. The Board of Wardens*, 53 U. S. 299 (1851)]; the interpretation of the "due process of law" clause of the Fourteenth Amendment, first adopted in *Mugler v. Kansas* (123 U. S. 623) in 1887, as requiring that legislation affecting "liberty" and "property" be "reasonable," that is to say, reasonable in the judgment of the court; a series of holdings whereby the "liberty" thus protected has been gradually extended to all valuable personal rights [*Holden v. Hardy*, 169 U. S. 366 (1898); *Near v. Minn.*, 283 U. S. 697 (1931)]; the holding definitely adopted in *Smyth v. Ames* [169 U. S. 466 (1898)] that charges set by public authority must yield what the court finds to be a "fair" return on the "value" of the property involved. Underlying most if not all of those holdings is the principle suggested by Marshall in *Brown v. Maryland* [25 U. S. 419, 444 (1827)] that it is not the *form* of a challenged statute

but its *substantive* operation which is determinative of its constitutional validity. It is in reliance on this principle that the court discarded the historical definition of due process of law as a *form* of procedure for the above conception of it which renders it immediately protective of *substantive* rights; and for the same reason, in applying this conception, the court may recanvass the entire factual situation which the legislature had before it when enacting the challenged statute [*Burns Baking Co. v. Bryan*, 264 U. S. 504 (1922)]. Indeed its interpretation of the due process of law clause of the Fourteenth Amendment today confers upon the court a practically discretionary veto power upon every state legislature. Sometimes this veto is mildly exercised, as between 1910 and 1920; at other times it is applied with considerable rigor, as from 1920 to 1930. Whether it is applied laxly or strictly depends upon no stable rule but upon the social philosophy of the majority of the justices.

The principal basis of "national" judicial review has always been the terms in which the congressional powers are granted, although at times the court has also ventured despite the clear terms of article VI, paragraph 2, to erect state power into an independent restriction on national power [247 U. S. 251 (1918)]. In recent years moreover the court has resorted more and more to what may be termed "covert" judicial review by giving an act of Congress a narrower application than it was intended to have in order to "avoid a grave constitutional issue" [156 U. S. 1 (1895); 213 U. S. 366 (1909)].

The power of the Supreme Court in the "national" and "federal" fields of judicial review rests to an important extent upon the difficulty of amending the national constitution. Most of the state constitutions, on the other hand, are amendable with comparative ease. Indeed it may be said that since the development of the modern doctrine of due process of law and the enactment of legislation securing to the Supreme Court the final voice in the application of this test under the Fourteenth Amendment (Act of Dec. 23, 1914; U. S. C. tit. 28, sect. 344c), "state" judicial review except as a means of holding the state legislatures to certain procedures in the enactment of laws has largely lost its *raison d'être*. Hence it is not without significance that by a provision adopted in 1912 the Ohio constitution ordains that with the exception of a certain class of cases "No law shall be held unconstitutional and void by the supreme court without the concurrence of at least all but one



of the judges." This, the first notable check to the development of judicial review in this country, was sustained by the Supreme Court in 1930 against objections based on the "due process" clause of the Fourteenth Amendment and the "republican form of government" clause of article iv, section 4 (Ohio *v. Akron Metropolitan P'k Dist.*, 281 U. S. 74).

The introduction of judicial review into the national constitution was prompted mainly by the very practical necessity of providing an effective and unobtrusive check on the ebullient state democracies which had shown themselves to be enemies of national unity and of vested rights, and this has remained its principal employment. Even so, previous to the Civil War, when the localistic spirit was strongest, both "national" and "federal" judicial review operated in comparatively narrow channels; indeed it is only since about 1890 that it has come gradually to spread beyond statable bounds because of the fact that at that period a majority of the court was indoctrinated with the then prevalent economic and social philosophy of *laissez faire*. Thus whereas before the Civil War acts of Congress had been invalidated in only two cases, nearly forty such cases have occurred since 1890; and whereas state enactments were set aside in fewer than twenty cases before the Civil War, probably twenty times that number of cases have resulted in the disallowance of state legislative provisions during the last forty years.

Champions of judicial review have invariably stressed its importance as an instrument for preserving the constitution; but the truth of the matter is that very few clauses of the constitution have furnished texts for extensive judicial exegesis, while on the other hand the main basis of "federal" review today is furnished by a judicial translation of the "due process of law" clause that is historically indefensible. The "higher law" conserved by judicial review is in fact mainly the *modus operandi* of American business today; and the values which this "higher law" conserves are freedom of individual business enterprise, short of "unethical" practices [253 U. S. 421 (1920)], and the unrestricted flow of commerce throughout the country [243 U. S. 332 (1916)]. The obvious case for judicial review is its tendency to stabilize business conditions nationally by minimizing the disturbing factor of local legislative interference and the opportunity which it occasionally offers for the further clarification and rationalization of public policies. The obvious case against it is its tendency

to postpone needed reforms beyond the period when they could have been most easily and advantageously articulated with the legal and social structure and its tendency to frustrate the prompt and effective application of the law, both state and national, to large interests.

While the written constitution is nowadays an almost universal feature of popular government, judicial review is encountered much less frequently. For some years from a period antedating the World War a prominent group of French publicists vainly urged the adoption of judicial review in France as the logical corollary of a written constitution. The chief obstacle in the way of the idea aside from the lack of a favorable juristic tradition lies in the fact that the *pouvoir constituant* as organized in the French constitution is substantially identical with the ordinary legislative power. For the same reason "national" judicial review has not yet established itself in Germany under the Weimar constitution, although a strong group of publicists have urged its theoretical claims. "Federal" judicial review, however, is specifically provided for (art. 13) and a special Court of State (*Staatsgerichtshof*) exists for its exercise.

Dickey taught that judicial review was a necessary accompaniment of federalism; but in fact it was not a feature of the old German Reich nor does it appear in the Swiss constitution although it is being agitated there. It is, nevertheless, to be found operative to a greater or less extent in Canada, Australia, Mexico, Brazil, Argentina, Venezuela and Austria—all federal states. The country in which it most closely approaches its American model in scope is Australia, but there are two important differences. Since 1907 the High Court of Australia has had exclusive jurisdiction of all constitutional cases whether arising under the commonwealth or the local constitutions. On the other hand, the High Court does not countenance any such doctrine as the modern American doctrine of due process of law. The constitution of the Dominion of Canada is an act of Parliament, the British North America Act of 1867. Since by the action of the Imperial Conference of 1930 all acts of Parliament applicable to the dominions are subject to alteration or repeal by the dominion parliaments (MacKay, Robert A., in *International Conciliation*, no. 272, 1931, p. 520), "national" judicial review in Canada is left on a precarious basis. While "federal" review will doubtless continue, the Supreme Court at Ottawa will in due course probably supplant

the Judicial Committee of the Privy Council as the court of final resort.

Among the new constitutions of central Europe that of Poland definitely forbids judicial review (art. 81); the Czechoslovakian constitution confines it to the question whether the challenged law was properly promulgated (art. 102); and the Austrian constitution accepts it and provides a special tribunal called the High Constitutional Court for its exercise (arts. 137-48 of constitution as amended in 1929) but only apparently upon the application of the national and state governments respectively. For this reason and because of the comparative ease with which the constitution may be amended and because of the immense range of powers assigned the federal government it may be doubted whether this jurisdiction of the High Constitutional Court will prove of material importance. In brief, while judicial review has recently attracted more attention abroad, the actual institutional consequences of this show of interest have so far been negligible.

On the other hand, it is a commonly recognized principle of public law in continental countries that courts of final jurisdiction may inquire whether statutes involved in cases before them were enacted by the proper constitutional procedure. This type of judicial review, if such it should be considered, may be termed "formal," to distinguish it from "material," or true, judicial review. The one is concerned with the procedure of statutory enactment, the other with the substance and content of the statutes. Formal, or procedural, judicial review is much the less rigorous of the two. While a content forbidden by the courts may be supplied by the legislature only in consequence of a constitutional amendment or the reversal by the courts of their unfavorable attitude, a misstep in the process of legislative enactment is usually easily remediable. In the United States "formal judicial review" is encountered only rarely. Most state courts regard the enrolled statute as bearing on the face of it sufficient and irrefutable proof of its authenticity, and the United States Supreme Court has never taken any other view [Dodd, W. F., "Judicially Non-enforceable Provisions of Constitution" in *University of Pennsylvania Law Review*, vol. lxxx (1931-32) 54-93; Field v. Clark, 143 U. S. 649 (1891); Leser v. Garnett, 258 U. S. 130 (1921)].

EDWARD S. CORWIN

See: CONSTITUTIONS; CONSTITUTIONALISM; NATURAL LAW; CONSTITUTIONAL LAW; AMENDMENTS, CONSTI-

TUTIONAL; LEGISLATION; DUE PROCESS OF LAW; FEDERATION; STATES' RIGHTS; SEPARATION OF POWERS; CHECKS AND BALANCES; SUPREME COURT, UNITED STATES, JUDICIAL PROCESS.

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**JUDICIARY.** The judiciary of a state may be defined as that body of officials whose work consists in the resolution of complaint, whether between subject and subject or between state and subject, that the laws of the state have been broken in some particular. Since the time of Aristotle it has been a matter of fairly common agreement among thinkers that the judicial power should be regarded in its nature and even more in the persons who administer it as separate from other aspects of political authority. The reasons for this view are embodied in the theory of the separation of powers. A legislature is normally too general and numerous a body to address itself to particular cases; and to leave to the executive the task of applying legislation to particular cases would be to make of it a judge in its own cause. By making the judiciary a body of men separate from either the subject is given an assurance, which he is unlikely to have in any other way, that his problem is independently assessed.

That is not to say that the judicial function can be easily distinguished from either the executive or the legislative. Judges who arrange the order of court business may reasonably be said to be doing executive work. To draw up rules of court, as does the committee on rules of the English judiciary, is to exercise a power which even if built upon an authority delegated by Parliament it is difficult not to call legislative; and when that power includes the right to determine fees it obviously partakes also of the taxing power, the most essential power in legislation. The separation of powers in fact is simply a convenience of arrangement rather than an immutable dogma; in any rigid sense it is unworkable.

This is shown clearly when the function of

judicial decision is considered (*see JUDICIAL PROCESS*). If the theory of the separation of powers were strictly true the judge would do no more than apply to particular situations a body of rules with which he was provided from without and he would at no point be in a position to determine the content of those rules. But there has been in fact no legal system in which the judicial function could be circumscribed in this way. Old rules have to be stretched to cover new situations undreamed of by the makers of the rules; sometimes, as in the case of the fellow servant rule [*Priestley v. Fowler*, (1837) 3 M. and W. 1] and many of the rules of equity, doctrines have been invented out of whole cloth by the judges. Under a written constitution like that of the United States the Supreme Court in fact determines the limits of the legislative power of both Congress and the state legislatures. He who has in his hands the interpretation of the law is by the nature of things its master. For this reason it is desirable in any state that there should be beyond the judicial authority a power capable in important cases, such as the income tax cases of the United States, of overriding the judicial determination in a particular decision. Unless such a power exists, the judiciary is bound to become the effective master of the life and fortunes of the state.

The first great problem that arises in any judicial system is the method by which the judges shall be selected. In western civilization this technique has been of a most varied character. In Great Britain the judges are of two kinds, lay and professional; the former are appointed by the lord chancellor (in the Duchy of Lancaster by the chancellor of the duchy), the latter by the prime minister, the lord chancellor or the home secretary, according to the post involved. All appointments are for life, subject only to good behavior, the latter meaning that no judge of the High Court may be dismissed save by an address to the crown from both houses of Parliament. In Great Britain the person making the appointment has no obligation to consult or to obtain confirmation from any other body or person; it has, however, become the practise in the case of lay magistrates to accept as a rule nominations put forward by committees advisory to the lord lieutenant of the county. In the United States appointments to the federal bench are made by the president, but he must obtain the consent of a majority of the Senate and there have been notable cases (one as recent as 1930) in which the presidential recommendation has been re-

jected. In the states of the American union selection is either by executive appointment, subject to the consent of an advisory body (as a rule either the legislature or the governor's council), or by election. The latter process may consist, as in Rhode Island and Virginia, in election by both houses of the legislature on a joint vote; or, as in most cases, it may consist in election by the ordinary qualified voters of the state, either voting at large, as in New York, or by districts with a separate elected judge from each district. Regulations vary from provision for a non-partisan ballot to implicit permission for ordinary partisan candidatures. Appointed judges in the federal courts sit for life unless removed by impeachment; in the states the grounds for removal are various, the widest perhaps being that of Kentucky, which permits removal "for any reasonable cause." Elected judges sit for widely varying periods, of which the two years of Vermont, the six years of Ohio, the fourteen years of New York and the twenty-one years of Pennsylvania may be taken as examples. It should be added that in Great Britain the heads of the different courts are appointed by the prime minister, as the chief justice of the United States Supreme Court is appointed by the president (the confirmation of the Senate being required), but in the United States the chief justice of the highest state court is selected in a variety of ways: he may be appointed or selected by lot or individually elected or chosen by the court itself or be the judge who has the shortest term to serve or he may be the senior judge, to name only some of the possible variations.

For lay judges in England no qualification is required save the approval of the appointing authority; for professional judges a minimum period of seven years' service at the bar is required. A newly appointed judge may go directly to the highest court of the land; and it is rare for the head of the whole judicial system, the lord chancellor (who is a member of the cabinet), to have any previous judicial experience. The qualifications demanded in the United States are more various. None is formally required of federal judges by the United States constitution; in the state constitutions are found qualifications as to age (twenty-five being the lowest), character, education, residence and length of practise (in Louisiana for as long as ten years) at the bar of the particular state.

The appointive system without legislative confirmation exists in the British dominions and colonies; and it may therefore be broadly said

that the basis of judicial selection in the territory where the common law prevails is either appointment or election, with a bias in favor of the former. On the continent of Europe a totally different system prevails. There the judiciary may be briefly described as a special civil service recruited by a special examination and without organic relation, as in Great Britain and the United States, to the bar. A Frenchman or a German becomes a judge in the same way as an Englishman or an American becomes a lawyer, save that there are a limited number of vacancies every year. Appointment from without is a rare exception. Promotion, after the original appointment by examination, is dependent upon the will of the executive; and there are all the usual guaranties of judicial tenure. The Swiss system, on the other hand, more nearly resembles the American. The judges of the highest federal court are elected by the federal legislature, and in the cantons there is every variation from appointment by the executive to direct election by popular vote. In the new Spanish constitution (1931) executive appointment prevails; but the minister is assisted in his choice by a council, whose verdict is intended to have considerable weight in the decision.

What is to be said of these different methods? With the British system of lay magistrates it is difficult to express any satisfaction. They are chosen mainly as a reward for political service—the last motive which should enter into judicial appointment. Save by accident they have no professional competence, and in any case which involves something more than common sense they tend to be at the mercy of the clerk of the court who acts as their technical adviser. Since moreover they do not sit continuously—the average magistrate sits for a fortnight in the year—there is a wide range of variation in punishment for similar offenses, depending largely upon the views and temperament of particular magistrates. On the basis of British experience it must be concluded that the place for the lay mind is emphatically in the jury and not on the bench.

The system of executive appointment has clearly much to commend it where it is carried out in a really responsible way. Its danger is that, in the absence of a need to secure confirmation for the executive choice, motives irrelevant to fitness for judicial position may enter into the appointment. In Great Britain, for example, it is certain that a place on the bench has only too often been a reward for political services, and there has been a tendency to reserve the highest

places on the bench for men who have occupied high political office. It is notable, for instance, that every lord chief justice of England in the last sixty years has, with one exception, been an ex-attorney general; and that exception was a judge who agreed to hold office until it was convenient to the government of the day to release the then attorney general. No doubt there have been few really dubious appointments under the British system; but it is worth remarking that the greatest British judges of the nineteenth century were either not politicians at all or were men who did not suit the atmosphere of the House of Commons. In so far as British experience may serve as the basis of generalization, its lesson seems to be that the unfettered discretion of the executive is not the best way of appointing judges.

The system of legislative confirmation has much more to be said for it. Certainly in the United States it has prevented bad appointments by compelling the executive to take account of what public opinion may say when his choice is made known. It has, however, clear weaknesses. It may tend to inject purely partisan considerations into the process of confirmation. It gives opportunity, as in the famous case of Justice Brandeis in 1916, for strong vested interests to work against a nomination which they suspect may be hostile to them. There is, finally, a chance for the display of all the vices of a corporate body when the choice of the executive falls upon one of its own past or present members. It would not be an unfair summary of American experience to say that confirmation of executive appointments is desirable but that it is not clear that the legislature should either in whole or in part be the source of the power to confirm.

*A priori* the case against the popular election of judges would seem to be unanswerable, especially where the term of office is short. The qualities which go to make a good judge are rarely to be discriminated by a vast and amorphous body like an electorate; and the necessity for reelection is not helpful to that independence of mind without which no judiciary can do its work adequately. It should, however, be said that the system has not worked badly in Switzerland and that in the United States it has produced some judges of a very high order. But success in a lottery is not an argument for lotteries; and most observers would probably agree in regarding the elective system as bad in principle and generally unsatisfactory in experience.

The system of a judicial civil service has much to commend it. So far as original appointment is concerned, it provides a notable safeguard against favoritism in nomination; and the *esprit de corps* engendered has certainly given to France a body of judges distinguished by their learning and technical competence. Its weaknesses, it may be argued, are twofold. The very fact that it is a civil service tends to make it both conservative in outlook and excessively formalistic in method; it tends to emphasize the procedural rather than the substantive side of law. And the fact that promotion is an internal matter tends to deprive it of the services of men who come to the problems of the law with a knowledge of the world outside the courts and therefore something of the statesman's insight. A system like the French may produce judges to rival Story in eminence or Willes in learning; it will hardly produce judges with the breadth of outlook of Mansfield or Marshall. And it may be argued that in the process of adjusting law to life the power to produce and use men of the stamp of Mansfield and Marshall is essential to the full success of a judicial system.

The implicit lesson of all this experience seems to be the desirability of executive appointment, subject to control by an advisory body. The latter should not be political in complexion nor should it be dominated by a purely professional element. Such a body should be relatively small in numbers, and in the event of disagreement with the executive the reasons for its decision should be made known. It is desirable that its members should sit for a considerable term of years and that they should not change with a change in the character of the executive. It is very improbable that purely partisan or wholly undesirable appointments would be submitted to such a body for confirmation; and it is at least possible that as it developed traditions it would prove a bulwark of safety in the assessments of fitness for judicial office.

Certain other problems remain. Experience suggests that the irremovability of judges, save for serious misconduct, is fundamental to the preservation of their independence; and the Anglo-American method of removal only by legislative action seems as useful a procedure as can be devised. It is always possible to use it, but the very gravity of the method reserves it for use only on the most important occasions. Too little attention, however, is given to the problem of establishing a proper retiring age. Judges do not often reach really important places

until they are fifty or over; and as a pension is seldom afforded until some fifteen or twenty years have elapsed, judges are frequently old men who have lost touch with the ideas of a new generation. Recently, for example, the average age of the judicial committee of the British Privy Council was over seventy-five. On the other hand, it is certain that some of the finest judicial work of modern times has been done by men of advanced years; and the case against too early a compulsory retirement is proved by instances like Lords Lindley and Macnaghten in England and Mr. Justice Holmes in the United States. It is clearly undesirable, however, that a judge should himself be the sole determinant of his fitness for continuing to function. The problem could be met by fixing a normal retiring age of seventy-five, with a power in the proposed advisory committee to the executive to extend this period annually where it seems desirable. In general this would mean that the average judge had done some twenty years' service at the time of his retirement while the exceptional judge would be able to make his activities on the bench span the experience of a whole generation.

A further problem is raised by the relation of judges in inferior to those in superior courts: the difficult question, in short, of promotion. In a judicial system like that of France the limitation of the sources of recruitment offers a reasonable prospect to the judges of a lower court that performance of merit will be given some weight in the assessment of promotion. Influence and even political opinions doubtless have their part; but the notion of appointment by merit has its effective place in the system. In England, however, there has been no case in which a police magistrate has been promoted to the county court and only one case in which a county court judge has been appointed to the High Court, while in the last seventy-five years the highest judicial offices have been filled far more often directly by first appointments than even by promotion from the High Court. In the American federal judicial system promotion from the district court to the circuit court has been fairly frequent but promotion from either to the Supreme Court has been exceptional. Thus in England and to a lesser degree in the United States the system tends to discourage able young men from accepting positions on inferior courts because of the knowledge that their judicial career will too often end there; and it also tends, especially in England, to staff the inferior courts with middle aged men who have not been successful enough at the

bar to hope for the distinction of high judicial appointment. Any serious consideration of the problem of judicial appointment will have to pay attention to these implications, for they tend to make the work of the popular courts unsatisfactory in quality and, further, to multiply appeals—a serious matter where, as in England and America, litigation is expensive.

Anglo-American practise has widely diverged from that of the European continent in its insistence that the place of ultimate decision for all legal problems shall be the ordinary courts of law. Although the growth of state functions has led to the development in both England and the United States of all kinds of special tribunals, some of which are staffed by officials who are not trained in the law, the legal problems, especially in the realm of *vires* to which the decisions of these tribunals give rise, have always been settled in the absence of special statutory provision by the House of Lords and by the Supreme Court. The doctrine underlying this practise has been that the citizen is not assured of the full rule of law unless his rights may be determined, at least in the last resort, by a tribunal independent of the executive power.

Upon the continent a different view has been taken. The theory of the separation of powers regards executive and judiciary as upon an equal footing; for the latter to control the acts of the former would therefore be a violation of principle. Therefore cases which concern the activities of ministers or civil servants when acting in their official capacity come before special tribunals known as administrative courts, in which the claims of the parties are determined by judges usually specialized to this type of work. In this way cases involving the administrative process are judged by men who are acquainted with the special problems to which it gives rise; and they possess the necessary *expertise* to handle the quasi-judicial issues which are involved. Such tribunals, further, have the merits of flexibility, cheapness of procedure and rapidity of decision, which are seldom characteristic of the ordinary courts of law. It is tolerably certain that most of the Anglo-American criticism of administrative tribunals, at any rate as applying to France and Germany, is misconceived. *Droit administratif* is in both countries a well settled body of law; those who apply it have all the necessary training, both legal and technical, for the special problems they settle; and the special merits claimed for such tribunals do in fact characterize their operation. Nor can it be

said that, at any rate for the last sixty years, there has been lacking in these courts that independence which assures proper standards of impartiality of decision. In so far as it is desirable to separate public from private law—a problem of grave theoretical complexity—the system of *droit administratif* has in the last two generations satisfied all the canons of adequacy by which a judiciary is normally tested. In particular, it is worth emphasizing that the Conseil d'État in France has shown that a body of civil servants can display all the highest qualities of a great court of law.

The development of administrative tribunals in Anglo-American countries has given rise to special problems upon which judgment is more difficult. Certain conclusions, however, are clear: the growth of state functions gives rise to issues of fact of a highly technical nature for the settlement of which the purely legal training of the judge is not necessarily adequate; the volume of work done by administrative tribunals is so large that to allow appeals from them to the ordinary courts would congest the latter to an impossible point; most administrative cases involve the exercise of an executive discretion which can be properly appreciated only by officials concerned with the results of policy, and to have such discretionary problems determined by the ordinary courts is to leave to judges decisions upon questions which are not legal at all; administrative tribunals can work more flexibly, cheaply and quickly than the ordinary courts.

In these conclusions there is a truth which it is impossible to deny. Few impartial observers can doubt that the record of the English courts in quasi-judicial cases (e.g. statutes relating to housing legislation, workmen's compensation and the like) or of the Supreme Court of the United States in valuation cases has not been wholly happy. The ordinary judge cannot be expected to have *expertise* in these matters, and his training in the rules of the common law tends to make him approach issues of public administration from an unhelpful angle. But if administrative tribunals are to command public confidence it may be suggested that their membership must satisfy certain historic canons on which public confidence appears to depend. Their composition must be stable in character. The minister or department head must not be able to change their membership at his discretion or to overrule their findings on issues of fact where they exist to determine such issues. The men appointed to such tribunals must be known and chosen for

their competence in the theme of their particular jurisdiction. Such tribunals should moreover always contain a legal element. These canons are in fact satisfied by the French and German systems; it cannot be said that they have yet been satisfied in the tribunals which the necessities of the modern state have led Great Britain and the United States to erect.

Certainly the problems to which the extension of administrative jurisdictions gives rise are from the angle of the judicial function grave ones. If the determination of cases may be finally left to officials who do not necessarily have legal training or security of tenure and who do have an administrative interest in the result of the case, an appeal from their decision on suitable legal grounds would seem a priori to be a proper way of safeguarding public confidence in them. It is also urgent that their work should be done with adequate publicity and should be accompanied by explanations of the results. On this basis there seems no reason why in suitable cases the delegation of administrative decisions should not take place upon an increasing scale. Purely judicial questions could still be left to the ordinary courts; but there is no reason to suppose that with appropriate safeguards non-legal members of administrative tribunals could not do quasi-judicial work wherever their special competence is likely to prove of value. Any other attitude is a sacrifice of relevant experience to the requirements of a theory of the separation of powers which the progress of doctrine has made it increasingly difficult to defend.

This is, in short, to argue that there is a realm in which decisions that have a legal bearing require lay judges rather than the traditional experts of the law, always on the assumption that the requirements of law are properly safeguarded. But if in quasi-judicial decisions a mixture of special competence is likely to produce the most adequate result, the same principle may also be extended to the normal processes of the courts. It is difficult to see why the judge there should not be assisted by lay assessors competent in some special aspect of the decision he has to make. The desirability of this procedure is already admitted, for example, in the British Court of Admiralty, where naval assessors sit to assist the judge on technical points. Is it not at least equally desirable that the judge should be assisted on medical questions by expert medical assessors and on engineering or valuation problems by experts on engineering and valuation? The present position, in which the judge is left

to find his way between the disparate opinions of expert witnesses upon highly technical matters about which only too often he is hearing for the first time, can hardly be regarded as satisfactory. It assumes that a legal training combines with a judicial frame of mind to give birth to an omniscience which is hardly borne out by the decisions themselves. It is even possible to envisage the time when the process of inflicting sentence in a criminal case will depend less upon judicial intuition of what the case is worth as a crime than upon a series of recommendations from experts in criminal psychology and social welfare work who advise the judge as permanent officers of the court.

One final aspect of the place of the judiciary in the modern state deserves a word. There has never been any considered effort in modern times to relate the judicial function organically with the vital process of improving the law. From time to time the public is made aware of legal inadequacies by the *obiter dicta* of judges, and from time to time its opinion has been sought, either individually or collectively, upon particular problems. In England there is even provision in the Judicature Act of 1873 for a council of the judges with suggestions for legal improvement as one of its aims, but it is said that the council has not met half a dozen times since the statute was passed and has not on any of these occasions transacted important business. The Supreme Court has on occasion effected useful procedural changes although of a minor character, but it has never as a corporate body sought to inform the executive or the legislature upon desirable improvements in the law.

Work of this kind ought to be an inherent part of the judicial function. One of the many difficulties that law reform confronts is the technical character of its subject matter, of which the result is a serious limitation of the part that the layman can play in its improvement. The lawyer no doubt has always been a conservative force in society and the stability he largely protects has its own special social value. But this does not rule out the desirability of obtaining from the judiciary in a regular and coherent way their view of the state of the law and the means they would take, especially in urgent aspects, for its improvement. To allow their experience of its operation to go unutilized is surely a waste of an important source of social knowledge. Anyone who compares our present conception of legal institutions with the ideal, for example, set out by Bentham in his *Constitutional Code* will find it difficult to

resist the conclusion that the mere rendering of judicial decisions, no matter what the distinction with which it may be done, does not exhaust the services the judge can perform. There must be few judges, to take an obvious example, whose experience has not led them to a considered view of the value and limitations of the jury system, yet our knowledge of the burden of that experience is limited to an occasional remark in a biography rarely fortified by serious argument. Nothing, it may be argued, is more likely to augment the respect for judges or is more certain therefore to increase the regard in which law itself is held than the deliberate attempt to provide institutional channels for the expression and utilization of judicial experience, which are now wanting.

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*See:* COURTS; JUDICIAL PROCESS; RULE OF LAW; SEPARATION OF POWERS; CONSTITUTIONALISM; JUDICIAL REVIEW; PUBLIC OFFICE; ELECTIONS, LEGAL PROFESSION AND LEGAL EDUCATION; SUPREME COURT, UNITED STATES; JUSTICE OF THE PEACE; ADMINISTRATIVE LAW; COURTS, ADMINISTRATIVE; EXPERT TESTIMONY; EXPERT.

*Consult:* Sidgwick, Henry, *The Elements of Politics* (4th ed. London 1919) ch. xxiv; Laski, H. J., *A Grammar of Politics* (2nd ed. New Haven 1929) ch. x, and *Studies in Law and Politics* (New Haven 1932); Robson, W. A., *Justice and Administrative Law* (London 1928) esp. ch. v; Cardozo, B. N., *The Nature of the Judicial Process* (New Haven 1921); Pound, Roscoe, *The Spirit of the Common Law* (Boston 1921); Judson, Frederick N., *The Judiciary and the People* (New Haven 1913); Beradt, Martin, *Der deutsche Richter* (Frankfurt 1930); Fraenkel, Ernst, *Zur Soziologie der Klassenjustiz* (Berlin 1927); Baldwin, S. E., *The American Judiciary* (New York 1905); Bruce, A. A., *The American Judge* (New York 1924); Frankfurter, Felix, and Landis, J. M., *The Business of the Supreme Court* (New York 1927); Hauriou, Maurice, *Précis de droit constitutionnel* (2nd ed. Paris 1929); Garner, J. W., "The French Judiciary" in *Yale Law Journal*, vol. xxvi (1916-17) 349-87. For accounts of the judicial systems in specific countries, consult the bibliographies following the article on GOVERNMENT.

JUGLAR, CLÉMENT (1819-1905), French economist. Juglar was a physician but abandoned his practise in 1848 and devoted himself entirely to the study of economic problems. He became a member of the Société d'Économie Politique in 1852, was one of the founders of the Société de Statistique de Paris in 1860 and was elected a member of the Académie des Sciences Morales et Politiques in 1892.

Juglar's interest centered chiefly in the problem of business fluctuations. His *Des crises commerciales et de leur retour périodique en France*,



en Angleterre, et aux États-Unis (Paris 1862, 2nd ed. 1889; tr. by De C. W. Thom, 3rd ed. New York 1916), which won the award of the Académie des Sciences Morales et Politiques, marks a turning point in the study of business crises. It is a painstaking study of changes in commodity prices, interest rates and bank balances in which Juglar for the first time demonstrated the rhythmic, cyclical character of economic activities. His other prize winning study, *Du change et de la liberté d'émission* (Paris 1868), is a useful study of the exchanges at the end of the eighteenth century and the beginning of the nineteenth. In 1865 Juglar was commissioned to translate the text of the English bank investigations which were largely concerned with commercial crises, and he gave valuable testimony when a similar investigation was organized in France. He published a large number of articles in the *Annuaire statistique*, the *Journal des économistes*, the *Journal de la société de statistique de Paris* and in *Économiste française* and wrote the articles on banks and on crises in Say's *Dictionnaire des finances*.

JEAN LESCURE

*Consult:* Beauregard, Paul, "Notice sur la vie et les travaux de M. Clément Juglar" in Académie des Sciences Morales et Politiques, *Compte rendu*, n.s., vol. lxxi (1909) 153-79.

JULIANUS, FLAVIUS CLAUDIUS (Julian the Apostate) (331 or 332-63), Roman emperor. Julian, who was the son of a half brother of Constantine the Great, was born at Constantinople. In the massacre which after Constantine's death (337 A.D.) freed his sons from the rivalry of the emperor's other relatives only Julian and his elder half brother Gallus were spared. Both suffered from the suspicions of the emperor Constantius and were forced to spend six years on a remote imperial estate in Cappadocia. About 347 Julian was allowed to return to Constantinople. During his subsequent travels in Asia Minor he became a disciple of the neo-Platonist philosophers. For a short time he studied also at the University of Athens. In 355 Constantius sent him as Caesar to Gaul. Julian won a decisive victory over the Alemanni at Strasbourg and reorganized the administration of the province. In 360, when Constantius ordered troops from Gaul to march to the east to repel the Persian attacks, the army in Gaul revolted and proclaimed Julian emperor. The death of Constantius prevented civil war, and Julian succeeded to the throne in 361.

Upon his proclamation as Augustus, Julian professed openly for the first time the faith to which his studies and meditations had converted him—Hellenism. Just as Constantine had consistently endeavored to base the security of the Roman Empire upon a close alliance between the state and a united Christian church, Julian the Apostate sought to secure the prosperity of the empire through a revival of the worship of the ancient gods. Christianity was a menace not only to the pagan faith but to Greek culture as a whole, for in Julian's mind the faith and the culture were identified. Believing that only a reformed paganism could successfully resist its rival, he tried to create a pagan church. His tragedy lay in the fact that he gave to paganism a reinterpretation for which in the popular conception of the ancient faith there had been no adequate preparation; his fiery enthusiasm met for the most part only with indifference or ridicule. In 363 Julian was killed during the retreat which followed his invasion of Persia. Although at the outset of his reign he had professed a policy of religious toleration, imperial favor had soon become limited to the pagans. On his departure for Persia his animosity against the Christians was so violent that in the opinion of many had he returned he would have inaugurated a fresh persecution. His backward look in religion was matched by a political archaism seeking to restore the authority and prestige of the Senate. In the sphere of administration his passion for reform was practical and unmythical, especially his efforts to increase the membership and the financial capacity of the municipal senates, to reduce the expenditure of the imperial court and to render justice swift and impartial.

NORMAN H. BAYNES

*Works:* Julian's complete works, *Juliani imperatoris quae supersunt praeter reliquias apud Cyrillum omnia*, were published by F. C. Hertl, 2 vols. (Leipzig 1875-76), tr. by W. C. Wright, Loeb Classical Library, 3 vols. (London 1913-23); his laws and letters, *Epistolae leges poematium fragmenta varia*, were edited by J. Bidez and F. Cumont (Paris 1922).

*Consult:* Bidez, J., *La vie de l'empereur Julien* (Paris 1930); Geffcken, J., *Kaiser Julianus*, Das Erbe der Alten, vol. vii (Leipzig 1914); Simpson, W. Douglas, *Julian the Apostate* (Aberdeen 1930); Ensslin, W., "Kaiser Julians Gesetzgebungswerk und Reichsverwaltung" in *Klio*, vol. xviii (1922-23) 104-99; Baynes, N. H., "The Early Life of Julian the Apostate" in *Journal of Hellenic Studies*, vol. xlv (1925) 251-54.

JULIANUS, SALVIUS, Roman jurist. He was born at Hadrumetum in Tunis toward the end of the first century A.D. He succeeded his teacher

Javolenus as one of the heads of the Sabinian school but was destined by the authority of his writings to close its traditional rivalry with the Proculian school. Julian's fame depends on his share in Hadrian's legal reforms and on his *Digesta*. The earlier emperors had left the development of law to praetors and jurists, but with the growth of the imperial system the independence of these authorities had become anomalous and indeed unreal. Hadrian terminated the further development of praetorian law by confiding to Julian toward the close of his reign the task of stereotyping the Edict: Julian's Edict and no other was to be issued by future magistrates. It was a work of ripe judgment rather than of originality, embodying few departures from the traditional form. Hadrian also associated the juristic development of law more closely with the imperial authority by including the leading jurists, with Julian as chief, in his reorganized council, of which he so extended the civil jurisdiction that rescripts nominally imperial but actually settled by the legal members became a main instrument of other than statutory legal progress. Julian's *Digesta*, covering the whole law in ninety books (printed in Lenel, Otto, *Palingenesia iuris civilis*, 2 vols., Leipsic 1889, vol. i, cols. 317-484), belongs probably to the reign of Antoninus Pius when he was at the height of his great official career. This work, unequalled in influence except perhaps by Labeo's, became the basis of the commentaries of Ulpian and Paul and is the forerunner of Justinian's own Digest. What remains of it (through Justinian) is casuistic and practical; probably its dogmatic expositions have been suppressed in favor of those of Paul and Ulpian. Julian died presumably early in the reign of Marcus Aurelius and Verus, having preserved until an advanced age, as he says himself (*Dig.* 40, 5, 20), with one foot in the grave the thirst for learning. The emperor Didius Julianus was his grandson or great grandson.

F. DE ZULUETA

Consult: Buhl, Heinrich, *Salvius Julianus* (Heidelberg 1886); Fitting, Hermann, *Alter und Folge der Schriften römischer Juristen von Hadrian bis Alexander* (2nd ed. Halle 1908) ch. i; Kruger, Paul, *Geschichte der Quellen und Literatur des römischen Rechts*, Systematisches Handbuch der deutschen Rechtswissenschaft, pt. i, vol. ii (2nd ed. Munich 1912) p. 93, 182-87; Girard, P. F., "L'édit prétoire" in his *Mélanges de droit romain*, vols. i-ii (Paris 1912-23) vol. i, pt. iii; Pfaff, I., in *Paulus Real-Encyklopädie der klassischen Altertumswissenschaft*, ed. by Georg Wissowa, Wilhelm Kroll, and Kurt Witte, 2nd ser., vol. i (Stuttgart 1920) cols. 2023-26; Appleton, Charles, "La date des *Digesta* de

Julien," and "Le vrai et le faux Sénatus-Consulte Juventin" in *Revue historique de droit français et étranger*, 3rd ser., vol. xxxiv (1910) 731-93, and 4th ser., vol. ix (1930) 1-19, 621-68; Kalb, Wilhelm, *Roms Juristen, nach ihrer Sprache dargestellt* (Leipsic 1890) p. 57-61, Rechnitz, Wilhelm, *Studien zu Salvius Julianus* (Weimar 1925), and the review by Eduard Fraenkel in *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte*, Romanistische Abteilung, vol. xlvii (1927) 397-414.

JURIEU, PIERRE (1637-1713), French Huguenot publicist and ecclesiastic. Jurieu served as pastor at Mer and later as professor of theology and Hebrew in the Calvinist academy at Sedan. In 1681 he was exiled from France and went to Rotterdam. An ardent controversialist and a skilful writer, he was soon involved in many religious disputes not only with his Catholic opponents but also with his Walloon sympathizers and corligionists. His most celebrated theological adversary was Pierre Bayle, the French critic and philosopher. Jurieu's religious writings, however, have not attracted much attention. His reputation rests upon his political works. Influenced by the revocation of the Edict of Nantes he opposed in his *Préservatif contre le changement de religion* (The Hague 1682) and *Lettres pastorales adressées aux fidèles qui gémissent sous la captivité de Babylone* (Rotterdam 1686; English translation, London 1689) the divine right theory so cleverly defended by Bishop Bossuet. Jurieu also became a leading exponent of popular political and religious liberty and was one of the outstanding exponents of the idea of the sovereignty of the people in the seventeenth century. A pamphlet attributed to him, *Les soupirs de la France esclave qui aspire après la liberté* (Amsterdam 1689; English translation, 3 vols., London 1689-90), contained such a true picture of the political changes which occurred after its publication that it was reprinted a century later under the title *Les vœux d'un patriote* (Amsterdam 1788).

FRANKLIN C. PALM

Consult: Puaux, Frank, *Les défenseurs de la souveraineté du peuple sous le règne de Louis XIV* (Paris 1917); Sée, Henri, *Les idées politiques en France au XVIII<sup>e</sup> siècle* (Paris 1923) p. 191-208.

JURISDICTION. The concept jurisdiction (from the Latin *jurisdictio*, which means speaking by the law) appears in the Roman law and also in the modern civil and common law systems. It is at once too elemental and too ambiguous to be defined. It is perhaps an ideal prototype of a law term which seems to have

definite meaning but which reduces itself on analysis to a mere focal point for a variety of arguments applicable to a variety of dissimilar problems. The arguments are usually couched in negative form: that there is no jurisdiction or that a particular act will be or was in excess of the court's jurisdiction. The nature of jurisdiction can best be appreciated by considering when such arguments are appropriate and what they can accomplish.

A fundamental principle is that without jurisdiction there is no capacity to act as a court. The individuals who hold judicial office may behave as though they were holding court. They may announce their views in formal writing with signatures and seals as though they were pronouncing judgment, but the document is not a judgment. It is a "nullity." If execution issues to enforce it, those levying execution are not protected nor can title pass to purchasers on execution sale. No other court will aid in enforcement of the judgment or recognize it as settling a disputed issue. These consequences, however, follow only if the lack of jurisdiction is pointed out. Otherwise the void judgment may pass as valid. The usual method of making timely application to the court which rendered a judgment or to the proper appellate court to set aside the judgment for lack of jurisdictional basis is called direct attack. Collateral attack, on the other hand, is an allegation that a judgment is void for lack of jurisdictional basis made in a proceeding other than the one in which judgment was rendered.

As collateral attack may involve in serious hardship those who have relied on seemingly valid and final judicial action, every effort is made to limit its availability. This is done by permitting no argument except lack of jurisdiction and by allowing only the narrowest scope to that argument. Thus the ideal test of the logical validity of an argument in jurisdictional terms becomes: is there ground for collateral attack? It is a test which few jurisdictional arguments could meet.

In fact no attempt is made to save lack of jurisdiction untrampled for use on collateral attack. It takes its place with other arguments at every stage in a lawsuit as a reason for inducing a court to refrain from acting or to set aside past action. Counsel asking dismissal are always tempted to say for emphasis that their reasons go to the very jurisdiction of the court. Judges writing opinions fall to talking in jurisdictional terms partly because it is easier to adopt counsel's argument than to fashion explanation of

their own, partly because this seems the easiest way to impress the disappointed litigant with the fact that it is the law not the judge that refuses to hear him. The resultant descriptions of what goes to a court's jurisdiction differ with the situations in which they are used. Different considerations apply to prompt and delayed assertion of jurisdictional objections, to direct and collateral attack, to collateral attack on default and contested judgments, to those protesting on jurisdictional grounds alone and to those seeking to preserve a second line of defense on the merits in case their jurisdictional defense fails. Each situation requires its own balancing of the objections to the court with the desire not to delay or defeat litigants on technical grounds.

Different balances are struck in civil and criminal actions. In civil procedure many subtle refinements make for stability. Sometimes a jurisdictional objection may be "waived" by not raising it or by attempting also to preserve a defense on the merits. Again, the logic may lead to the paradox that even a court without jurisdiction has a limited jurisdiction to pass on an objection to its jurisdiction; its decision may be erroneous, yet it is subject to correction only by prompt appeal. If it decides that it has jurisdiction and enters judgment, the judgment will not be subject to collateral attack, for the issue as to its jurisdiction is *res judicata*. Again, the reason why a particular court is inappropriate may be called something else than a rule of jurisdiction—merely a matter of venue. In such a case disregard of it would not affect the validity of the judgment on collateral attack.

Such stabilizing devices are much less prominent in the criminal law. On the contrary, the writ of habeas corpus, originally devised to release prisoners "unlawfully" detained, as by order of a court acting without jurisdiction, has become simply one more method of appeal. The pressure to protect the defendant is here much stronger than in civil actions. To secure summary release or release after it is too late to appeal it is necessary for a court issuing the writ merely to say that the error deprived the former court of jurisdiction or at least that the judgment rendered was in excess of its jurisdiction. Thus the concept of jurisdiction having become attached to a remedy expands as new uses are found for the remedy, and eventually there is a shift from argument that the court is inappropriate to review of any gross error of substantive law or procedure, such as violation of a constitution.

Behind and overshadowing the attempt to fix the limits of a particular court's jurisdiction may be some fundamental struggle for power, such as those which have occurred between church and state, feudalism and centralized monarchy, centralized monarchy and a rising middle class, executive and legislature, federalism and states' rights, debtors and creditors, agrarian and industrial interests, economic conservatism and radicalism. Sometimes the stake is only in the prestige and revenue to be derived from holding court or appointing judges. Sometimes the ultimate objective is the disposition of particular types of litigation and the struggle is to get them before the courts deemed most likely to reach the desired results.

As far as the appropriateness of a particular court is concerned, it is affected by the nature of the plaintiff's claim, the amount in dispute, the status, residence and presence of the parties, their submission to the court and the observance of procedural prerequisites, such as service of process. Where the distribution of judicial business is a major political issue, whatever compromise is reached is naturally not subject to modification at the whim of litigants. A technical expression of this is that lack of jurisdiction of the subject matter cannot be waived by a defendant, although he may waive lack of jurisdiction over his person. But the historical political issues may lose importance with the lapse of time. The result may be a feeling that it would be too arbitrary and technical to dismiss a suit where it appears at a late stage that plaintiff has begun in the wrong court. Again the escape is by warping terminology. So far as a court can define the objection as not going to its jurisdiction over the subject matter it is free to dispose of the problem as justice to the litigants may require.

These are but scattered illustrations. A complete account of the situations where argument has been in jurisdictional terms would run the gamut of legal and constitutional history without being particularly illuminating. The analysis would tend to obscure rather than elucidate the social aspects of the actual problems. It is better to deal with specific problems and to examine the part which other concepts as well as jurisdiction play in their determination. One most important problem is the geographical distribution of judicial business—the place of trial.

The simplest treatment of the problem is to make a preliminary inquiry as to the testimony which each party wants to present and to arrange the place of trial with regard to the convenience

of the parties and their witnesses, the date at which trial can be had and the relative burden on those whose taxes support the courts and who render jury service. The modern English practice provides for determining the place of trial within the country by discretionary order of court in the light of such considerations.

This result was approached also by the later common law in a more intricate and indirect way. Actions were classified as either local or transitory, the former consisting chiefly of actions concerning land. If the action was local, the plaintiff had to designate as the county for trial that one wherein his claim arose; otherwise he might designate any county in England. The place of trial thus designated was called the venue. The defendant could obtain a change of venue of a transitory action if the county selected by the plaintiff was inconvenient. The venue of any action might be changed if it was impossible to obtain a fair trial in the original county.

The common law rules can be appreciated only if they are considered in the light of the court system of which they were a function. The royal courts were all centralized at Westminster. There original writs were obtained, pleadings exchanged and points of law argued. Unless the proceedings at Westminster finally disposed of a case on a point of law they would culminate in an issue of fact for trial by jury at the assizes. The judges of the central courts and counsel rode the circuit of the various counties to conduct the jury trials. Under such circumstances the place of trial became merely one procedural incident in the trial of a case.

It is when the localized jurisdiction of courts is considered and place of trial is confused with the plaintiff's selection of a court that troubles begin. Here talk is likely to be in jurisdictional terms with metaphysical bugaboos lurking in every thicket. Thus the logic which describes action by a court without jurisdiction as a nullity makes it impossible to consider a case as pending until it has been brought in a court that has jurisdiction. Even a court with jurisdiction cannot simply order the case transferred to a court of another state or nation as more convenient for trial. The result is a common assumption of necessity to choose between trial in the court where the plaintiff has begun and a dismissal which forces him to start all over again elsewhere, thereby delaying him, perhaps depriving him of the advantage of having attached property of the defendant, perhaps barring his action altogether,

if meanwhile the statute of limitations has run.

In so far as this difficulty arises under the American state system of semi-autonomous county courts it can be and frequently is obviated by statutes providing that where the plaintiff has begun in the wrong county court the defendant's only remedy is to move seasonably to change the venue to the proper county court. Substantially the same result might easily be achieved on an interstate or international scale. The court where the plaintiff has begun his action might, on the defendant's objection to the forum as inconvenient, stay or dismiss the action upon condition that the defendant make stipulations which would have the same effect as though there were a change of venue to some other state. The defendant could be required to waive service of process in the other state, to agree not to plead the statute of limitations and to furnish substitute security in case the plaintiff had attached property in connection with his original action. Jurisdiction would then concern itself only with the problem of the appropriateness of the courts of a particular state to pass on the preliminary question of the proper place for ultimate trial of the case. Since the preliminary question would be handled on motion and affidavit, no difficulties of transporting witnesses would arise.

But the treatment of the problem has not been that of a simple matter of procedure; it has exhibited mechanical jurisprudence at its worst. The common law distinction between local and transitory actions has been laid down as though it involved principles of inherent justice, and its historical origin as an incident of a particular system of courts has been ignored. The rule that the plaintiff may lay the venue of a transitory action where he chooses has been transferred from county to interstate scale without the county qualification that the defendant may obtain a change of venue where the plaintiff has designated an inconvenient place. The rule that actions for injury to land are local has resulted in complete denial of relief to the plaintiff when the defendant has not been subject to the jurisdiction of the courts where the land is. The attempt is made to get along with historic categories that go back to primitive notions as to the necessity of having a defendant physically in court and consenting to a particular method of settling the controversy. The modern method is to give the plaintiff judgment by default after the defendant has been notified to appear. But early common law procedure involved resort to a series of co-

ercive measures culminating in outlawry: when the defendant was forced to appear, weights were put on his chest until he "consented" to jury trial.

The foundation of jurisdiction is still said to be physical power, but the physical basis for the "power" becomes more and more metaphorical. Attempt has been made to classify the bases for jurisdiction over a defendant as presence (however transient) at the time of service of process, consent (which might be coerced or "implied") and allegiance (citizenship, domicile or perhaps a residence which was less than domicile, if the defendant were temporarily outside the state). These concepts have been worked out as though the norm of litigation were an individual defendant, whereas today most jurisdictional problems involve enforcement of vicarious liability: claims against foreign corporations and other business associations and non-resident individuals who carry on business within the state through local agents. Perhaps the one notable exception is the non-resident motorist, and there the real party in interest is likely to be a corporate insurer. Various American statutes have required non-residents engaging in local activity to designate local agents, sometimes state officials, on whom process might be served. Questions have arisen as to whether these statutes did or could extend to claims arising outside the state and as to the effect of non-compliance. Could consent be implied from the conduct of business within the state; could the foreign corporation be regarded as present wherever it did business; was jurisdiction dependent on the power of the state to exclude the business altogether; or was it merely an incident of a general "police power" to regulate any business conducted within the state? Where it is not possible to satisfy the requirements of jurisdiction over the defendant, there may be jurisdiction over his property or over debts owed to him, and there may be a proceeding *quasi in rem* to apply the property or debts as far as they will go in satisfaction of the plaintiff's claim.

The law of interstate jurisdiction has developed as constitutional law. The full faith and credit clause of the federal constitution has been held to require recognition of a judgment of a sister state only if the court which rendered it had jurisdiction. The due process clause of the Fourteenth Amendment has been held to be violated by the entering of judgment without jurisdiction. The power of the Supreme Court to review state decisions under these two provi-

sions has created a federal law as to the limits of jurisdiction which a state can confer on its courts. The tendency of state legislation has been to provide new machinery and the tendency of the federal law has been to expand jurisdictional concepts to justify legislation, affording plaintiffs ever wider opportunity to bring suit at forums convenient for them.

These enlargements of plaintiffs' choices of forums have made possible vexatious selections. Forums are chosen not because they are convenient for plaintiffs but because they are highly inconvenient for defendants. This has been particularly notorious in the field of personal injury litigation against interstate railroads and the method has been combined with highly organized "ambulance chasing." Lawyers in states known to be good plaintiffs' states have employed agents to secure personal injury litigation from distant states. Defendants have tried to meet this strategy by asking the court selected by a plaintiff to dismiss on grounds of convenience and, failing in this, by raising objections to the jurisdiction under the due process clause. Moreover by asserting that the exercise of jurisdiction would be an interference with interstate commerce contrary to the commerce clause of the federal constitution defendants attempt to carry these constitutional issues if necessary to the Supreme Court of the United States. They have also gone to courts of plaintiffs' domicile and sought equity injunctions against the maintenance by the plaintiff at law of his action in a remote and inconvenient forum. Where the plaintiff has no substantial property at his domicile and is willing to move to the state in which he is bringing suit he cannot be punished for contempt of the injunction, and its efficacy is dependent upon whether it will be recognized as a reason for dismissing the action by the law court in the other state.

Raising points of constitutional law and seeking injunctions against exporting suits are clumsy expedients calculated to prevent only the most obviously vexatious choice of forum by a plaintiff. Defendants were forced to resort to them by the general failure of state courts to entertain a motion to dismiss on the ground that some other forum would be more convenient. The plea of *forum non conveniens* is allowed in civil law countries and also in England; and American courts have reached a similar result on a slightly different theory in cases where the plaintiff is a foreigner, holding that under such circumstances it is a matter of discretion whether

or not they will permit him to sue. But in the case of plaintiffs who are citizens of sister states they have allowed suit on transitory actions wherever there was jurisdiction. This is in part a mechanical application of common law rules of venue and in part due to a theory of constitutional law which the Supreme Court of the United States has recently held to be without any foundation. The theory was that the privilege of suit was a privilege of citizenship guaranteed to the citizens of the several states and that no distinction could be made between a resident plaintiff suing at his home and a non-resident plaintiff suing far from home merely to make things difficult for the defendant. It remains to be seen whether exploding this notion of a constitutional requirement will result in leaving the state of trial largely to the discretion of the court where the plaintiff has begun his action, as in the case of related problems concerning the county or nation of trial. At least one state court has continued the old mechanical approach.

In criminal procedure one meets again the familiar concepts of venue and jurisdiction, but the problems of place of trial, its setting and its history are each quite different. As in civil actions, the early common law requirement that jurors know the facts made necessarily for trial in the locality of the crime. But this did not disappear with the development of the modern form of jury trial as readily as it did in civil actions. Both the peculiar interest of the immediate community in "seeing justice done" and the traditional reluctance to deprive the accused of any ancient advantage tended to keep criminal actions local. No convenient fiction enabled the prosecutor to allege that a crime was committed at A to wit at B. On the contrary, the accused could escape, no matter how clear the proof that he had committed a crime, if he could raise a reasonable doubt as to whether it was committed in the particular county where he was being tried. Quibbles could arise if a shot was fired, a libel sent or stolen goods taken across a boundary line or if principals acted in one place and accessories in another. An extreme illustration is the early holding that if a wound was inflicted in one county and the victim died in another there could not be trial anywhere.

Escape from the extremely local basis for criminal prosecution was found in the fiction of "continuous crime," which assumed that a new theft was committed when the stolen goods were carried into another county, and in a long series of specific statutes permitting trial in either

county of crimes committed partly in one and partly in another and permitting trial of certain crimes in any county, of others where the accused was apprehended and still others before certain courts. The culmination of the development is the English Criminal Justice Act of 1925, which adopts substantially the same practise as in civil actions. Subject to change on grounds of convenience, trial may take place in any county in which the accused is apprehended, is in custody or appears. Legislation in the United States has followed the earlier English statutes removing the most serious difficulties caused by the strict requirement of local venue in the case of particular crimes. It is also possible, where local feeling would prevent a fair trial, for the accused and occasionally the prosecution to obtain a change of venue to some other county, but the usual constitutional guaranties of trial by a jury of the locality have prevented the adoption of as flexible a procedure as is now available in England.

If sweeping enough the legislation expanding the concept as to when a crime has been committed in a county can also take care of the case in which there has been action partly in the county and partly in another state or country. Where acts of treason or counterfeiting are done abroad, special statutes provide for trial in the state prejudiced. There is a peculiar administrative difficulty when the accused is not to be found in the state where the crime was committed. Unlike a civil plaintiff the interested state does not follow the accused about to prosecute where he is found. He can be brought to justice in only three ways: by kidnaping or extradition in order to return him to the state of the crime or by interest in his prosecution on the part of the state in which he is at the time. Interstate extradition is provided for in the federal constitution, but it has been held unavailable where the criminal never enters the state of his crime and therefore cannot be called a fugitive from it. This makes possible a failure of justice, unless his action is also made a crime by the state in which the criminal act is done. Thus in a famous case where a murder was committed in Tennessee by shooting from North Carolina those accused could not be convicted in North Carolina nor could Tennessee have them extradited. As between nations, extradition is a matter of treaty or of occasional acts of courtesy. Extradition treaties are a relatively modern development. The civil law countries ordinarily do not allow extradition of their own nationals but

go quite far in prosecuting them for major crimes committed abroad. Italy even tries foreigners for major crimes committed outside the country if prejudicial to its nationals. England now punishes Englishmen for commission abroad of such crimes as murder, manslaughter and bigamy. But American law still clings tenaciously to the old common law theory that only the state where the crime is committed has jurisdiction.

How far a state should go in dealing with crimes committed abroad depends in part on the alternative possibility of turning the accused over to another state interested in prosecuting him, in part on prevailing conceptions of the object of the criminal law—to what extent the state is seeking vengeance, to what extent it is attempting to deal with its criminal population. Assuming that there is a recognized interest in preventing a particular accused from escaping trial, it must be balanced against the desire to have all possible safeguards against unjust convictions. Discussion of the problem as a matter of jurisdiction is only another illustration of the use of this concept as an impressive way of begging a difficult question of degree and making a hastily assumed result seem to follow from inexorable logic.

ROGER S. FOSTER

*See:* REMEDIES, LEGAL; PROCEDURE, LEGAL; COURTS; VENUE; JUDGMENTS, COMITY; FULL FAITH AND CREDIT CLAUSE; EXTRADITION; EXTERRITORIALITY; CAPITULATIONS; CITIZENSHIP; DUAL CITIZENSHIP; DOMICILE; FOREIGN CORPORATIONS.

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#### JURISDICTIONAL DISPUTES. See DUAL UNIONISM.

**JURISPRUDENCE.** In the widest sense of the term jurisprudence is the science of law. This is the original and etymological meaning and the one to which the best usage conforms. But there are three other uses. In the narrower sense commonly employed by English writers jurisprudence might be called the comparative anatomy of developed systems of law. This narrower conception became current in English speaking countries through Austin's *Province of Jurisprudence Determined* (London 1832), an epoch making book written exclusively from the analytical standpoint. In French usage jurisprudence means the course of decision in the courts,

and this sense has been fixed in good American usage by the classical work of Judge Story on *Equity Jurisprudence* (3 vols., 14th ed. Boston 1918), which traced the course of decision in Anglo-American courts of equity. By a not unnatural transition the word has also come to be used, chiefly in the United States, as a polysyllabic synonym for law itself. It might be best to speak of jurisprudence as the science of the legal order or of the legal ordering of society, including the legal process and also the institutions and the body of authoritative legal materials by which it is carried on. For the word law is used both of the legal order and of the means by which it is brought about. Thus "respect for law" means respect for the legal order but "the Roman law" means the body of authoritative legal materials with which the Romans administered justice and maintained the legal order. Thus jurisprudence is concerned both with the task of the legal order, namely, social control through the legal ordering of human relations in politically organized society, and with the means, namely, legal institutions and law.

The methods and preconceptions of juristic study have shifted with the large changes in intellectual attitudes. In the seventeenth and eighteenth centuries men thought of the different bodies of organized knowledge of social phenomena as philosophy, in the nineteenth century as history and in the twentieth century as science. These changes often mean little more than that the rise of some new branch of learning or some new intellectual interest leads scholars in every field to rephrase the teaching of the past in terms of it. When the philosophical method was dominant jurisprudence was called a philosophy; when a historical method prevailed it was thought of as history; and under the reign of positivism and sociological method it has been considered a science.

In general analytical jurists have thought of jurisprudence as concerned with the mass of authoritative precepts by which justice is administered in a developed political society. Historical jurists have conceived of all social control as within their province. Philosophical jurists have tended to think of legal precepts as a specialized type of moral precept and so have been led into the whole domain of valuation and regulation of conduct. Sociological jurists have thought of a process and of the authoritative materials of administering justice as something to be treated and appraised with



reference to that process. Much of this divergence of view as to the scope of jurisprudence results from difference in the problems to which these jurists have been addressing themselves. Analytical jurists have in the main written under conditions of economic and political (and hence legal) stability, when there was little or no occasion to draw on materials outside of the authoritative tradition. Hence it seemed to them that all that the jurist might reasonably require was to be found within the confines of current legislation, doctrine and judicial decision. Historical jurists have sought to replace authority and reason by history as an unchallengeable basis for what goes on in the legal ordering of society. Hence they have drawn upon all the phenomena of social control in the evolution of the legal order. Philosophical jurists have flourished chiefly in times of legal growth and so have been concerned most with the sources upon which courts and jurists draw to enrich the authoritative legal materials. Sociological jurists looking at law functionally have been more interested in what law does and how it does it than in what it is and so have looked primarily at the legal order. A complete science of law requires for its different purposes all of these starting points and resulting methods. It calls for a grasp of the authoritative materials of administering justice as they are and as they have been, of the problems of social control for which they have grown up or have been devised and of the extent to which the materials and their application do or can meet the problems.

Historical jurists in discussing the nature of law commonly include under it the whole of social control. The analytical jurists limit it to a specialized form of social control through the administration of justice—the adjustment of human relations and constraining of behavior to the demands of social life by the authority of the state. In this sense we may say that law as a specialized form of social control, such as we know it in developed political societies, begins with lawyers. It begins when the traditional conduct of transactions, decision of causes and procedure of advising parties to controversies become secularized and pass into the hands of a specialized profession. At Rome a turning point was reached when the traditional formulae of actions were made public and when a little later the first plebeian pontifex maximus began to give consultations in public. But Roman law became significant as a legal system

only with the rise of the professional jurists—consults at the end of the republic. Modern law had its beginnings when Roman law became the rival of the law of the church and then set itself free from clerical control; and the modern science of law began when jurisprudence was emancipated from theology. In English legal history the supremacy of the king's courts—the source of the common law—may be dated from the Constitutions of Clarendon (1164), which put definite and narrow limits to the jurisdiction of the ecclesiastical courts. The history of American law in the original thirteen states began when the administration of justice came into the hands of professional lawyers after a regime of justice carried on chiefly through clerical and military magistrates.

In the strictest sense the scientific treatment of law may be said to have begun when lawyers or law writers first distinguished cases superficially analogous and sought a principle behind the distinctions. Thus the beginnings of juristic science at Rome took the form of distinguishing cases which came within a precept of the codified customary law from those which did not, where both might seem to. This method is reproduced in the "putting of differences" and "taking of diversities" so characteristic of the common law until the seventeenth century. The next step, after having compared cases and thus compared rules in a particular system, was to compare rules of different systems by analysis. Such a step was taken in Roman law in the later republic. But even before these beginnings the foundations of a science of law were laid in philosophy, and here as in almost every sphere of mental activity the beginning must be made with Greek philosophy.

In classical Greece law in the lawyer's sense was not fully or clearly differentiated from other agencies of social control. The Greek word *nomos*, which we translate "law," was a word of many meanings, among them ethical custom, religious rites, law in general in the lawyer's sense, a rule of law and social control as a whole. While the Greek city-state must be considered politically organized, it was very close to and in many ways in transition from a kin organized society. Indeed if Greek law is in form political, it is in substance very largely tribal. Greek philosophers, observing the contrast between the kindreds and the kinless and the competition between the traditional tribal law and the enacted law of the city-state, sought

to find some assured basis of social control other than tradition and habit of obedience, on the one hand, or the will of the politically supreme body, on the other hand. They were thus led to consider the great diversity of ethical customs and laws, both as between Greeks and "barbarians" and as between the Greek cities. Not only were no two cities alike in these respects, but the same city often had different rules of law on the same subject at different times. Thus from one standpoint it seemed that the legal order was a mere matter of enactment or convention and was subject to the arbitrary control of anyone wielding political power for the time being. But since contests of oligarchy and democracy for political supremacy were the staple of life in the classical Greek city, there was a real menace to the general security in a conception of the legal order as a product of arbitrary individual will. Philosophers sought a more assured basis of social control and found it in the analogy of the constant and universal phenomena of physical nature. They conceived the legal order as an organizing of human activities so as to keep each man in his appointed place in the politically organized society of an ideal Greek city. They held that right and law had their basis in a harmony or fitness involved in the nature, that is the ideal, of things. Right and law were taken to be independent of human will and to have universal validity.

Roman lawyers carried these ideas from political philosophy over into law. Where the Greek philosophers wrote on natural right, that is, the just or the right by nature or ideal, the Roman jurists spoke of natural law, that is, a speculative body of universal ideal principles involved in the ideal of things. This universal body of ideal principles served as the basis of lawmaking, of juristic development of legal materials, and of criticism. The classical period of Roman law is marked by the attempt to make the actual law conform so far as possible to this ideal standard. Natural law substituted a philosophical juristic technique for the traditional art of the lawyers of the republic.

Law was one of the chief subjects of study in the mediaeval universities, and the twelfth century represents a new start in juristic thought. From that time juristic development runs along two lines—legal and philosophical. In the one there is a gradual development of scientific treatment of the texts of the Roman law; in the other there is speculation as to the basis of

the authority of law and ethical justification of its precepts and doctrines. Behind the purely legal development was the academic juristic theory of the continuity of the empire. In some sort this was an ideal. For spiritual purposes Christendom was the church; for temporal purposes it was the empire. The practical law teaching of the Middle Ages assumed that the ideal or postulated empire was the empire of Augustus and Constantine and Justinian. Only in this way could a legal mind satisfy itself that the text of the *Corpus juris* was authoritative legislation binding upon "the empire" and hence upon all Christendom. From the simple method of the glossators (twelfth and thirteenth centuries), who took up the text bit by bit and interpreted it, there grew up from the thirteenth to the latter part of the fifteenth century among the commentators a highly complicated method of exposition based upon formal logic and the scholastic philosophy. System was put into subjects and departments of the law where the glossators had confined themselves to particular texts. Among practical lawyers the method of the commentators continued to the seventeenth century but the science of law was carried forward in the meantime by a new school of jurists. At the end of the fifteenth century the revival of learning, the influence of philosophical thinking and in particular humanist study led to the school of humanists, who made a scientific study of the law as a whole as distinguished from the study of the texts and titles of the *Corpus juris*. The outstanding jurists in this school were Cujas (1522–90), the pioneer of legal history, and Donellus (Doneau) (1527–91), the pioneer of systematic analytical exposition of the law as a whole.

As a philosophical discipline jurisprudence grew up as an important branch of theology. Philosophers began to consider the philosophical-theological bases of right and of the binding force of law. While the primitive idea of the end of law as a mere keeping of the peace had come back for a time with Germanic law, the study of the Roman texts and the familiarity of the mediaeval theologians with Aristotle restored the Greek conception of law as an orderly maintenance of the social status quo. Law was conceived as a system of precepts imposed by authority or by custom to maintain a stationary society as it was.

In general it may be said that the thirteenth century put philosophy behind law to sustain authority. From the thirteenth to the seven-

teenth century jurisprudence was held to be an application of theology. The sixteenth and seventeenth centuries divorced the philosophy of law from theology and divorced law from authority. In the seventeenth and eighteenth centuries what would now be thought of as treatises on jurisprudence were treatises on the law of nature and nations. That is, a general philosophical introduction sufficed as the basis of jurisprudence, politics and international law. The institutions and functions of government, the relations of individuals with each other and with the state and the relations of states with each other were the subject matter of one body of knowledge. The nineteenth century divorced legal philosophy from political philosophy and definitely set off jurisprudence as a separate science. The twentieth century seeks to unite jurisprudence with the other social sciences through some form of social philosophy.

After the Reformation the two lines of development in jurisprudence, the practical and the philosophical, converge. The authoritative basis of practical exposition and the authoritative basis of philosophical speculation had alike failed. The academic doctrine of the continuity of the empire and the consequent binding force of the Roman law books were given up, and law was emancipated from the text of Justinian. Likewise the Protestant jurist theologians of the north of Europe had not hesitated to declare that there was a sufficient basis for natural law apart from the Scriptures or even, as Grotius put it, that natural law could be conceived even if there were no God. For a time the science of law and the authority of legal precepts were based solely upon reason: jurists believed that a complete and perfect system of legal precepts could be built up upon principles of natural law discoverable by reason and derived from the ideal of the abstract man. Thus the seventeenth and eighteenth centuries are in many respects comparable to the classical era of Roman law. The fields of jurisprudence and of ethics were taken to be the same. It was sought to make law coincident with morals. Legal precepts were made to conform to what each particular writer thought on ethical grounds they should be. An era of creative lawmaking resulted, the influence of which is still felt in law and in the science of law.

In the nineteenth century certain lines of cleavage, involved in divergent aspects of eighteenth century philosophical jurisprudence, and different phases of reaction from the law

of nature school brought about a separation of jurists into three well defined schools—the historical, the metaphysical and the analytical. The influence of an age of absolute governments, of which the French monarchy of the old regime represented the type, revived the conception of law as enactment; a doctrine of authoritative legislative declaration of reason which alone had ultimate authority no longer proved satisfying. Moreover the philosophy of Kant had undermined the method of eighteenth century jurisprudence. For a time the place held by theology in the Middle Ages and occupied by reason in the seventeenth and eighteenth centuries was usurped by history.

Although there were important forerunners, historical jurisprudence was founded by Friedrich Karl von Savigny (1779–1861). His method was philosophical and historical and his continental followers are frequently called the German historical school in distinction from the English historical school founded by Sir Henry Maine (1822–88). Maine was in a very real sense a follower of Savigny, but his method was comparative and historical and was much influenced by analytical jurisprudence, as the method of the German historical school was influenced by the contemporary metaphysical jurisprudence of the continent. Historical jurisprudence came to prevail generally in continental Europe and in the United States in the last third of the nineteenth century. Philosophically the historical jurists were Hegelians. They urged some form of idealistic interpretation of legal history, usually an ethical idealistic interpretation in which the history of law was thought of as a record of the realizing or unfolding of an idea of right or a political idealistic interpretation in which it was regarded as a realizing or unfolding of the idea of freedom. They carried forward the doctrine of those eighteenth century jurists who held legislation and precepts of positive law merely declaratory. The natural law jurists said they were declaratory of reason. The historical jurists said they were declaratory of the social experience in the administration of justice in which an idea of right or an idea of freedom was unfolding. In consequence they regarded law as something which could not be made consciously. They regarded custom as the typical growing point of law and found the basis of observance of law in the social pressures behind legal precepts, while analytical jurists found it in sanctions imposed by the state.

Philosophical jurisprudence was carried on in the nineteenth century by the metaphysical school, which was especially strong in Italy and in Scotland. This school sought to work out an ideal critique of legal institutions, legal doctrines and legal precepts, deduced from a fundamental idea of right or some single fundamental formula of justice. Where the law of nature school thought of an ideal body of legal precepts, the metaphysical jurists thought rather of an ideal element in the law and a critique of legal precepts on the basis of that element. Conceiving the ideal element as the significant part of the law, they held with the historical jurists that law is found not made. Also they rejected the analytical conception of sanction, thinking rather of the ethical and moral bases of legal precepts. In England and the United States it has been customary to speak lightly of this school and to assume that their speculations were wholly in the air. It is true that they did not directly and immediately affect the actual course of judicial decision and juristic writing. But through their influence upon the historical school they fixed the lines of the ethical interpretation of legal history and gave content to the idea of freedom which historical jurists postulate as unfolding in legal development. Maine's famous generalization that the history of law is the record of a progress from status to contract simply puts in concrete form the 'cardinal idea of the metaphysical school.

Another trend in eighteenth century theory, which had conceived of an authoritative declaration of natural law by the sovereign, was carried forward in the nineteenth century by the analytical school. Its founder, John Austin (1790-1859), was a disciple of Bentham and a zealous utilitarian. In form this school broke wholly with philosophy. It conceived law as an aggregate of rules and considered that when it had defined a law it had thereby defined law. It sought to take the authoritative precepts of developed systems of law as they were and to analyze legal institutions and legal conceptions as they actually obtained, and in that way to reach a universal science of law. So far as they considered the content of law at all, they looked at it from a utilitarian standpoint. But they considered the materials given and shaped by utility as put in legal form by a lawmaker analogous to Hobbes' absolute monarch. They regarded law therefore as something made consciously by lawmakers and held that rules of

law derived their authority from the force and constraint behind them. They held that no rule could be said to be a law unless it had behind it the judicial organs of the state. To them a statute as a legal precept deliberately established by the sovereign was the typical form of law. If we think of law as made up of three elements, a body of precepts, a received technique and a body of received ideals, we may say that analytical jurists looked exclusively at the first of these elements. They were concerned only with what one of them has called "the pure fact of law," excluding all consideration of ideals. They postulated a body of legal precepts made at one stroke on a logical plan to which those precepts conformed in every detail and set out to discover that plan by analysis.

Metaphysical jurisprudence to some extent worked out a critique of law from the outside. But analytical jurisprudence and historical jurisprudence simply set up a critique of the particular body of law in terms of itself. They served well for the period of economic, political and legal stability in the latter half of the nineteenth century. But toward the end of the century it came to be felt that the science of law was behind the actual administration of justice. It was serving to retard growth and resist the pressure of new interests seeking legal recognition and security. Analytical jurisprudence had culminated in what has been called "the jurisprudence of conceptions." A certain number of authoritative starting points for legal reasoning and a certain number of authoritative categories into which the facts of particular cases were to be forced by legal reasoning were regarded as sufficient for the decision of every conceivable case. New situations of fact could do no more than call for logical application of the authoritative principles or logical classification in the established categories. Any new situation was to be met by deduction from a fixed traditional conception. The alternative was legislative establishment of a new precept. But when legal precepts were thought of as mere commands of the sovereign there was no guaranty that the rules prescribed would comport with the demands of reason, as would be called for by the social-philosophical jurisprudence of today. Likewise historical jurists took the conceptions of the traditional law for necessary fundamental conceptions of all law. They insisted that all legislation or restatement must run along idealized

traditional lines. Even the accidents of legal history were likely to be insisted upon as necessary principles or necessary categories. Accordingly toward the end of the nineteenth century the three schools began to dissolve. Sometimes they made concessions to each other, as, for instance, in continental Europe, where the historical method and the metaphysical method came to be regarded as complementary. The metaphysical school definitely disappeared by the beginning of the twentieth century. The historical school and the analytical school still have adherents, but both have been largely superseded by new types of juristic thought.

In general the development of jurisprudence in the twentieth century has taken two directions, one philosophical, the other sociological. In the one line we find a revived philosophy of law giving rise to a social philosophical jurisprudence. In the other functional study of legal institutions in the light of all the social sciences and a conception of the legal order as a social institution have replaced exclusive consideration of the authoritative materials with which justice is administered. Social philosophical jurisprudence began in the last quarter of the nineteenth century with the social utilitarianism of Rudolf von Jhering (1818-92). His method might be said to be analytical and social philosophical. He insisted particularly upon the end, or purpose, of law, analyzing the law of the time and place in order to reach principles and general conceptions, but subjecting them to a critique with reference to the end which law subserves. His great achievement was in turning attention from the nature of law to its purpose, insisting on the interests which the legal system secures rather than upon the conceptual apparatus by which it secures them. His theory of rights, in the sense of analytical jurisprudence, as means whereby interests are secured, taking the claims or desires of human beings as ends which the legal order seeks to satisfy, and his rejection of the jurisprudence of conceptions because it ignored these ends are enduring achievements of legal science.

Somewhat later social philosophical jurisprudence was carried forward by the neo-Kantians, who have been the most influential group in that trend in the present century. Their founder and leader, Rudolf Stammler (1856- ), carried forward the philosophical side of nineteenth century jurisprudence. His method might not unfairly be characterized as philosophical and

sociological. Stammler's main purpose was to work out a universally valid method of judging as to the justice attained by legal precepts in the time and place. As contrasted with the eighteenth century conception of universally valid ideal precepts and also with Kant's essay at a universal critique, Stammler sought rather a universally valid method of developing a relative critique whereby justice might be achieved in the time and place. He brought back into jurisprudence what the French call *juridical idealism*; that is, the search for ideals to which law ought to conform. His great work has been in giving definite outline to the ideal of the legal order and the ideal of the end of law by which jurists and judges are governed in finding and developing and applying legal precepts. His enduring achievements for jurisprudence lie in the formulation of the social ideal of the time and place, thus directing attention to the ideal element in law which the analytical jurists had rejected, and in a theory of the application of legal precepts where the last century thought simply of their nature. Nineteenth century philosophical jurisprudence asked whether a particular legal precept was just. Stammler asks whether and how far justice may be attained by means of the precept. Where the nineteenth century considered that if rules were abstractly just the results of the application of the rules in particular cases need not be looked into, he has taught the present century to seek just results by means of legal precepts conforming to and administered in the light of social ideals. ✓

A third type of social philosophical jurisprudence is represented by Josef Kohler (1849-1919), the leader of the neo-Hegelians. His method was historical and social philosophical, carrying forward the historical jurisprudence of the last century. Like the historical school he recognized limitations on the efficacy of effort to improve the law, in that any culture must shape the legal materials which have come down to it and is limited by those materials; but he thought of historical continuity as a practical condition rather than as a necessity. He recognized that law while it must be stable must nevertheless also change. He thought of law as a product of the civilization of a people in the past and of attempts to adjust the results of that past civilization to the civilization of the present. The adjustment must be made with reference to the fact of a continually changing civilization, and the traditional legal materials must be shaped so as to further rather than

retard the developing culture. His most important contribution is his theory of the jural postulates of the civilization of the time and place. He considers it the task of the jurist to discover and formulate the principles of right assumed by or expressed by a given civilization. Not only may these jural postulates serve as a critique of legal precepts, but, even more, received ideals may be tried with reference to them; and definiteness and clear outline may thus be given to the ideal of the legal order which is so large an element, even if an unconscious one, in the development and application of legal precepts.

In France social philosophical jurisprudence has shown three types of thought: an adaptation and broadening of neo-Kantianism; a neoscholastic philosophy of law seeking a firmer grasp of that element of law which consists of traditional views as to the end of law and traditional ideals of the legal and social order; and a positivist sociological philosophy of law having many affinities with mechanical sociology. The neoscholastic and positivist sociological types are particularly important. The leader of the former, François Geny (1861- ), has made a notable contribution to the science of law in pointing out the importance of the element of technique, of which more will be said presently. The leader of the latter, Léon Duguit (1859-1928), deduced a positivist natural law from a principle of social interdependence through a similarity of interest and a division of labor which were taken to be observed and verified social facts. His theory is of some importance in connection with the problem of values to be spoken of in another connection.

Historical jurisprudence was modified in another way by Sir Paul Vinogradoff (1854-1925). Where the historical school saw in the history of law the unfolding of a single idea, he saw a succession of ideas, giving rise to a succession of types—the origins of law in totemistic society, tribal law, civic law or the law of the city-state, mediaeval law as a combination of canon and feudal law, individualist law and the beginnings of socialist law. The central point of his doctrine was his contention that historical types are the foundation of a theory of law.

More recently there has been a tendency in Germany to merge the formerly distinct types of social philosophical jurisprudence in what might be called a neo-idealism which seeks to understand, to organize and to criticize the ideal

element in law. Particularly this school seeks to transcend nineteenth century individualism and nineteenth century orthodox socialism by a conception which shall measure neither community values and civilization values in terms of personality values nor personality values and civilization values in terms of community values but shall conceive civilization as the end toward which both a maximum of free individual self-assertion and an efficient social organization are but means.

A sociological school is still to some extent formative. The development of sociology has been too recent and too rapid to serve as the basis of a school with a well defined creed and fixed program. Moreover definiteness in such matters was in the spirit of the last century more than of the present. But in a general way it may be said of the sociological jurists as compared with the nineteenth century schools that they are concerned not so much with the content of a body of law as with its working. They think of it not as necessarily made or necessarily found but as a social institution which may be improved by conscious effort, whether its content is made or found or both. They urge as the basis of its authority the social ends which law serves. They do not think of either custom or statute as necessarily the type of a law but regard the form of legal precepts as but means to ends which are of more importance. Chiefly they are positivists or neorealists but their pragmatist method, as has often been pointed out, is consistent with more than one metaphysical doctrine.

Sociological jurisprudence has gone through three stages and may be said now to be in a fourth. The first positivist philosophies of law were mechanical positivist and gave this color to the first sociological jurisprudence. Indeed the first sociological jurists did little more than put positivist philosophy behind the nineteenth century historical jurisprudence. Where the historical jurists had found a historico-metaphysical principle behind the development of law, they found physical laws. But the result was the same. Juristic and legislative creative activity were alike futile. Men might observe the inevitable operation of social laws but they could not affect it. The second stage represented a biological approach to law. It was partly the old mechanical sociology of law with a biological vocabulary. Partly also it used biological analogies to work out a sort of embryology of law, relying upon study of the social and legal

institutions of primitive peoples to point out the laws of legal development. In another form it used some biological principle as a basis for a philosophical system, as, for example, in the relationship of the biological struggle for existence to the theories of law as a product of class struggle. The psychological stage, which followed, was of more significance and is still represented in current juristic writing. It has brought about study of the world view of judges, doctrinal writers and lawmakers.

About the beginning of the present century sociological jurisprudence entered what may be called the stage of unification. While the nineteenth century schools sought to construct a science of law solely in terms of and on the basis of the law itself and in effect to set up a critique of the law of the time and place in terms of that law, it is now recognized that this complete separation of jurisprudence from the other social sciences is unnecessary and unhappy in its results. In the nineteenth century the problems of jurisprudence were not appreciated by the related social sciences, and the achievements of the latter, on the other hand, were likely to be ignored by the jurist. A gulf developed between legal thought and popular thought which was very marked at the beginning of the present century. The backwardness of legal institutions in fulfilling social ends and the reluctance of lawyers to permit or even perceive such ends are in large part chargeable to the science of law as it existed in the nineteenth century. In the present stage of unification the sociological jurists recognize that each of the directions which jurisprudence has taken offers something to the science as a whole but is not to be pursued exclusively. Even more they recognize the futility of a detached, self-centered, self-sufficient jurisprudence. Beginning with the proposition that the legal order is a phase of social control and to be understood must be taken in its setting among social phenomena, they urge study of the actual social effects of legal institutions and legal doctrines; sociological study in preparation for lawmaking; study of the means of making legal precepts effective in action; study of the actual methods of juristic thinking, judicial decision and legislative lawmaking; a sociological legal history in which the social background and social effects of legal precepts, legal doctrines and legal institutions in the past shall be investigated; and above all study of how these effects have been brought about.

In the immediate present juristic thinking as a whole appears to be running in two channels. On the one hand, there is criticism of ideals and attempt to organize, systematize and give definiteness to those received ideals that must be considered a part of the authoritative legal materials. On the other hand, there is an increasingly manifest tendency to revert to the frame of mind of the analytical jurists and exclude everything but the positive legal precept from the conception of law and the province of jurisprudence. A group of jurists in continental Europe seek a "pure juridical science" by excluding all ideals of interpretation and of application, conceiving that by throwing out everything which gives life to the law they can impart "clarity and rigor" to its phenomena. Other jurists move in the same direction by assuming the law to be a normative science differing from other bodies of knowledge in that it starts with postulates where others start with observation. Accordingly a theory of sovereignty and a legal logic assuming the constitution to be a fundamental and unchallengeable basis are thought to produce a pure science of law divorced from all subjective speculation; the postulates being settled, everything will flow from them with the inevitableness of a mathematical demonstration. The leader in this tendency is Hans Kelsen (1881- ). No doubt such a universal science is possible, but it is achieved by ridding the law of all the doubts and difficulties which make a science of law worth having.

Another phase of this movement for objectivity may be seen in a group of new realists in America. This school is still formative and cannot be said to have any detailed or official creed. But five items to be observed very generally in the writings of those who may fairly be grouped in this school are significant. In general these jurists have faith in the significance of statistics. They seek objectivity by some one method or line of approach which is considered to have exclusive reality. One of these lines of approach is rigid terminology; another, already spoken of, is the theory of a normative science depending upon postulates assumed as unchallengeable starting points; another is observation of the phenomena of administration of justice carried on objectively and scientifically and is expected to yield formulae as rigidly exact and free from any personal or subjective element, whether in formulation or application, as, for example, those employed by the engineer. Many assert

that the sole valid approach is by way of psychology and it is commonly assumed that some one psychological starting point is inevitably to be chosen. Still another characteristic is insistence on the unique single case rather than on the approximation to a uniform course of judicial behavior. Radical neo-realism seems to deny that there are any rules, principles, conceptions or doctrines, because all judicial action, or at times much judicial action, cannot be referred to them, because there is no definite determination whereby we may be absolutely assured that judicial action will proceed on the basis of one rather than another of two competing principles and because concrete cases not infrequently fall into a no man's land which lies between most legal conceptions. Since much takes place in the course of adjudication which does not fit exactly into the doctrinal plan, it is assumed that the principles, the conception and the plan are without reality. Finally, many of the new realists think of law as a body of devices for the purposes of the transaction of business instead of as a body of means toward general social ends, thus putting the whole emphasis on the exigencies of the economic order where the nineteenth century put the whole emphasis on the general security of the economic order.

Much that is likely to prove valuable for jurisprudence is involved in these recent tendencies. But it should be borne in mind that jurisprudence must consider not merely how judges do decide but how they ought to decide to give effect to the purposes of the legal order, not only how the judicial process actually takes place but how it should go forward. Psychology may be of aid in clarifying the manner in which justice is administered but this cannot dispense with the question of how justice ought to be administered. This question of ought turning ultimately on the theory of values is the most difficult one in jurisprudence. Those who long for an exact science analogous to mathematics, physics or astronomy are inclined to seek exactness by excluding this problem from jurisprudence altogether. But such a jurisprudence has only an illusion of reality; the significant question is the one excluded.

In the nineteenth century metaphysical jurists often argued that jurisprudence must stand still until all had agreed on the metaphysical fundamentals without which there could be no juristic superstructure. The legal science of that time succeeded nevertheless in reaching an agree-

ment as to the end of law and in formulating a criterion of values from each of the many diverse metaphysical starting points of the time. Likewise ethical philosophers have been wont to urge that there could be no accepted measure of valuing interests for legal purposes until we were all agreed on the highest good. But jurists have not awaited the outcome of debates on this fundamental point. In the last century they succeeded in coming to certain general ideas from each of the different ethical standpoints and found that they served well enough for the legal science of the time. It would seem therefore that jurisprudence need not choose definitely and decisively from among the competing psychologies of today and commit itself irrevocably to one of them, nor need it wait for psychologists to agree, if that is ever likely to happen. It ought to be able, from whichever of the important current psychologies it starts, to reach a sufficient psychological basis for juristic purposes. As to the denial of reality to rules, principles, conceptions and doctrines, such a view is not unnatural as a protest against the assumption of the analytical school that law is nothing but a simple aggregate of rules. But it is equally unreal—that is, at variance with what is significant for a highly specialized form of social control through politically organized society—to conceive the administration of justice or the legal adjustment of relations or even the working out of devices for the more efficient functioning of business in a legally organized society, as a mere aggregate of single determinations.

In the nineteenth century jurisprudence was chiefly concerned with three questions: the nature of law, the relation of law and morals and the interpretation of legal history. Juristic discussion of the nature of law was largely futile because it did not connect the question of what law is and the attendant controversy as to the relative claims of the common law and legislation to the name with other problems of jurisprudence. The significance of the question of what law is can be brought out only when it is considered in connection with the equally old problem of law and morals, with the distinction between law and equity, with the discussion of the province of court and of jury, with the controversy as to fixed rule or wide discretion in procedure, with the movement for the individualization of punishment and with the continental controversy over the application



of legal rules. The question of the nature of law must be brought into relation with these questions as to a considerable extent forming with them the larger problem of rule and of discretion in the administration of justice, and that problem goes back to an ultimate one of a balance between the general security and the individual life. A developed body of legal precepts is made up of two elements, an enacted, or imperative, element and a traditional, or habitual, element. There is a constant movement back and forth between these two. The traditional becomes formulated in legislation and becomes imperative. The imperative becomes overgrown by a judicial gloss and is incorporated presently in the common law. But the traditional element comes to rest upon juristic science and the habitual modes of thought of a learned profession; thus the basis of its authority seems to be reason and conformity to ideals of right. On the other hand, the imperative element rests upon the authority of the state and is easily taken for a product of the sovereign will. In consequence of these two elements of developed bodies of law and of the different bases upon which their authority rests two distinct ideas of law are to be found throughout the history of jurisprudence, and definitions of law have oscillated between these two ideas according to the circumstances of legal systems and the agencies through which their precepts have for the time being been expressed.

Much of the discussion as to the nature of law has assumed that jurists were talking about the same thing, whereas analytical jurists had in mind the precept element of law (rules, i.e. precepts attaching a definite detailed legal consequence to a definite detailed state of facts; principles, i.e. authoritative starting points for legal reasoning; conceptions, i.e. carefully defined categories to which, when a given situation of fact is brought within one of them, certain rules, principles and standards attach; and precepts prescribing standards, i.e. certain limits of conduct and authoritative guides to the valuation of conduct to be applied in view of the circumstances of each case), historical jurists had in mind very largely the traditional art of the lawyer's craft (the authoritative traditional technique of finding the grounds of decision in the mass of precepts) and philosophical jurists had in mind the ideal element in law (a body of received ideals of the social order, and so of the legal order, of what law is and what law is for, of what legal precepts ought to

be and how they ought to be applied). Thus nineteenth century jurisprudence expended much of its energies in debating whether some one of the three elements in the authoritative materials of administering justice possessed exclusive significance. Today we may very well give up such discussions. All three elements should be considered and together they constitute the background of juristic writing and judicial decision and are decisive in the choice of starting points for legal reasoning and in the interpretation and application of legal precepts. Analytical jurisprudence overlooked the technique element and indignantly rejected the ideal element. But it is the technique element which is decisive in giving character to each of the two great legal systems of the modern world, the common law and the civil law. There is no uniformity of precepts in the common law world nor in the civil law world, yet English speaking lawyers everywhere understand each other as perfectly as each fails to understand the continental or the Latin American lawyer. Such things as the respective attitude of the common law and the civil law toward statutes and judicial decisions or toward specific relief illustrate the profound influence which technique plays no matter upon what pretext it is exerted.

As to the operation of the ideal element it is significant to compare the way in which Married Women's Acts in the fore part of the nineteenth century were held down as in derogation of the common law with the willingness of courts to go even beyond the letter of statutes in giving effect to laws abrogating or altering rules of the feudal property law. In both cases the statutes were in derogation of the common law. But the doctrine of strict construction of statutes in derogation of the common law was not applied to the laws which overhauled the law of real property and purged it of archaisms. Married Women's Acts, on the other hand, ran counter to an ideal of a society which pictured women as in the home and not about in the world entering into legal transactions. That the one set of statutes conformed to a received ideal and was given the fullest effect, while the other did not and was held down in operation, is not to be explained by the common law canons of interpretation.

In connection with the ideal element in law it is important to note the growth of ideals as to the end of the legal order. The first ideal is a very simple one of keeping the peace.

Greek philosophers later worked out a conception of the legal order as a social institution for maintaining the social status quo. This conception prevailed in antiquity. With the downfall of the Western Empire the ideal of keeping the peace came back for a time, but the later Middle Ages adopted the Greek and Roman ideal of an orderly maintaining of the social status quo. Following the Reformation a new ideal developed which culminated in the nineteenth century and perhaps was best formulated by Kant. It might be defined as an ideal of a maximum of free individual self-assertion as the highest good. Today that ideal is manifestly giving way and the fact that the ideal element in the law is in transition will account for many things upon which the new realists rely to show the futility of the authoritative apparatus of administering justice. Because received ideals are in flux and the line between authoritative ideals and the personal ideals of particular judges is more than usually hazy, law and its application are for the time being much at odds in some important fields of judicial and administrative action. What is most needed is a constructive theory of the neglected element of the law in which the mischief lies. Here is the task to which social philosophical jurisprudence has been addressing itself. A philosophical jurisprudence which will organize and criticize and illumine the element of received ideals, as analytical jurisprudence and historical jurisprudence have done for the precept element, will achieve substantial improvements in the administration of justice.

Juristic attempts to formulate a new ideal of the end of law are taking two directions. On the one hand, there is endeavor to substitute an idea of cooperation in the maintaining and furthering of civilization for the idea of free competitive self-assertion which obtained in the nineteenth century. On the other hand, there are attempts to conceive law in terms of what has been called social engineering, using engineering in the large sense which industrial engineering has made familiar in the United States. In this mode of thinking the legal order is assumed to be part of the process of social ordering, functioning partly by the administration of justice, partly by administrative agencies and partly by providing guides in the form of legal precepts, so that conflicts of interests are avoided or minimized and individuals are kept from collision by having pointed out to them the paths which each is to pursue. The

legal order is taken to be an aggregate of activities—judicial, administrative, legislative and juristic—so far as they are directed to the adjustment of relations, to the compromise of overlapping claims and the securing of interests by fixing lines within which each may be asserted with a minimum of friction and waste, and to the discovery of devices whereby more claims or demands may be satisfied with a sacrifice of fewer. Regarded in this way as one side of the process of social control, the legal order is thought of as a task or a series of tasks in social engineering. It is conceived to be an elimination of friction and a precluding of waste as far as is possible in the satisfaction of unlimited human desires out of a relatively limited store of the goods of existence. Law is taken to be the body of knowledge and experience with the aid of which this phase of social engineering is carried on. The end of law then would be to satisfy all human demands and to secure all interests as nearly as may be with the minimum of friction and of waste so that the means of satisfaction may be made to go as far as possible. •

Contemporary discussion as to the relation of law and morals is coming to be merged in a broader consideration of the place of law in the whole process of social control. In a pre-legal stage, that is, a stage preceding lawyer's law, law and morality were undifferentiated. In the first stage of lawyer's law, which might be called the stage of strict law, law and morality were sharply differentiated. The law took no account of precepts or considerations outside the body of legislative materials. In a succeeding stage, which might be called the stage of equity and natural law, law and morals were identified. If for convenience we use morality to denote a body of accepted conduct and morals to mean a theoretical valuation of conduct, the strict law ignores both. On the other hand, the stage of equity and natural law would make both the authoritative legal precept and the accepted body of conduct conform to the standards of rationalist morals. In a succeeding stage, represented by the period of legislation and codification from Diocletian to Justinian and in the modern world by the nineteenth century, law and morals were coordinated or contrasted. Analytical jurists held that morals are a matter for the legislator and law a matter for the jurist. In the present stage of the socialization of law many of the features of the stage of equity and natural law are repeated and there is a revival

of the subordination of jurisprudence to ethics. Morals are regarded as an evaluation of interests and law as a delimitation of interests in accordance with such a valuation. Thus the real problem proves to be one of valuing conflicting or competing interests, which results from the historical realizing or unfolding of an idea in the Hegelian sense. From this standpoint legal history has been regarded as a record of the unfolding of an idea of human experience in adjusting relations and insuring conduct consonant with civilized society. Where the idea has been recorded from an ethical standpoint as an idea of right there has been an ethical interpretation. Where, as with most English and American jurists, it has been recorded from a political standpoint, there has been a political interpretation. Later positivist ideas gave rise to ethnological and biological interpretations. But the most important of these interpretations of legal history has been the attempt to understand the history of law in terms of a single economic idea.

The Marxian method of economic interpretation attracted little attention in jurisprudence until the last decade of the nineteenth century. It passed into American juristic thinking in the era of Rooseveltian progressivism in the first decade of the twentieth century and is still an influential element in American juristic thought. In its earlier form it was an idealistic economic interpretation urged by Hegelians, who regarded the history of law as the unfolding of the economic principle of the satisfaction of the material wants of mankind. In the United States a combination of a mechanical positivism with analytical jurisprudence gave rise to an economic interpretation in which it was urged that all law is made consciously by men who make legal precepts to suit the ends of the dominant social class. Others have urged a realist economic interpretation in which it is conceived that law is concerned with the ends of groups in power for the time being and is determined by economic exigencies. Jurists of this type argue that right and law mean nothing but power; that questions of law are simply questions of power; that those in power generalize their purposes and put them in universal terms and that thus doctrines and principles of law arise. Much that has been written in support of the economic interpretation proceeds on misunderstanding of the legal doctrine of liability for wrongs done by an agent or servant. Much more depends on a misunderstanding of

the development of the law of torts at common law. Much more also has been based on very doubtful arguments as to liability without fault in England and in the United States. No one doubts that economic conditions play a great part in determining the ideals of the time and place and that they influence powerfully the formulation of these ideals. These considerations must be reckoned with in formulating the jural postulates of a given civilization. Thus the influence of the economic situation upon the traditional element of law is clear enough. But this influence is indirect and often remote. Frequently the economic situation behind a doctrine is not the contemporary economic situation but that of the period when the doctrine was formulated. One has only to consider the American law as to business corporations and the persistence with which courts and legislatures, although they operate in the shadow of business enterprise, have decided and passed laws in the spirit of a traditional jealousy of juristic persons, to realize how slowly law yields even to the desires of an economically dominant class.

Three persistent problems recurring in different forms in all stages of legal development may well be termed fundamental in jurisprudence: the problem of rule and discretion; the problem of the valuing of interests; and the limits of effective legal action.

Analytical jurists have assumed an antithesis between law and administration, holding that justice according to law is necessarily judicial justice according to formula ("a government of laws and not of men"). The doctrine of separation of powers, in which the judicial power is carefully segregated from the executive and the legislative, was taken over from political theorists and became a cardinal tenet in the juristic faith of the nineteenth century. The trend today is to recognize that reliance must be placed both upon men and upon rules in any effective fulfilment of the ends of law. The problem is not rigidly to exclude the one or the other but to effect a proper adjustment between judicial justice and administrative justice, and between a judicial justice held down to an application of authoritative legal precepts by an authoritative technique and a necessary measure of individualization to be achieved only by free judicial action. Experience seems to show that in large part rule must be assigned to one portion of the domain of the legal order

and discretion to another. Inheritance and succession, interests in property and the conveyance of it, transactions of commercial law and the creation, incidents and transfer of obligations have always been a fruitful field for effective legislation. On the other hand, legislation has achieved little where adjustments and compromises were to be made not with reference to interests of substance but in the weighing of human conduct and passing upon its moral aspects. Codes and uniform state laws have achieved their purpose in connection with the law of property, the law of inheritance and succession and commercial law. They have achieved little or nothing in the law of torts where indeed continental codes are confined to a few generalizations and the actual working out of the law has been taking place chiefly through judicial decision. No one has attempted seriously to codify the law of torts in the English speaking world nor is any attempt likely to be made to reduce to legislative form the doctrines of equity as to the conduct of fiduciaries. On the other hand, the administrative tribunals which have been set up to individualize the application of law, as well as those which have developed in other legal systems, have to do with cases involving the moral quality of individual conduct or of the conduct of enterprises as distinguished from matters of property and commercial law. Titles to property or the collectibility of the assets of a bank cannot be suffered to depend upon individual ideas of what is right and just. On the other hand, no formulation in advance can take care of the minute variations in individual conduct which make each item unique and require a large margin of application if the results are to be tolerable.

Where the nineteenth century thought of law as existing to give effect to natural rights (qualities of individuals by virtue of which they ought to have certain things or be at liberty to do certain things), jurists since Jhering have thought of recognizing, delimiting and securing interests. It is conceived that a legal system attains its ends by recognizing certain interests, by defining the limits within which these interests shall be recognized legally and given effect through legal precepts and by endeavoring to secure the interests so recognized within the defined limits. For such a theory an interest may be defined as a demand or desire which human beings, either individually or in groups, seek to satisfy and of which therefore the order-

ing of human relations must take account. Conflicts or overlappings of these interests call for an ordering of relations and of conduct if civilized society is to be maintained. The law does not create these interests: so much of a kernel of truth there was in the old idea of a state of nature and in the theory of natural rights. But the law recognizes certain interests, classifies them, defines the extent to which it will give effect to them and devises means for securing these interests when recognized and within the defined limits. At every point in this process recourse must be had to a theory of values. Interests must be recognized in generalized forms admitting of treatment by general formulae. They must be weighed and valued as generalized, taking care that the generalizations do not sacrifice to the interests which call for rule and formula too much of other interests and thus result in friction and waste.

Since Jhering deduction of absolute rules has been increasingly given up and a method of weighing claims or demands with reference to the ends of law has more and more prevailed. Social philosophical jurisprudence has been chiefly concerned with the working out of such a method. Social utilitarians would value interests with respect to social ends, translated as ends of the law, but this assumes that social ends are something given. Neo-Kantians value interests by the social ideal of the time and place. Neo-Hegelians value them by the extent to which their recognition and security make for maintaining or furthering civilization: claims are to be referred to the jural postulates of the civilization of the time and place and to be generalized in terms thereof; then we are to ask whether and how far they promote civilization. These are typical systems of the immediate past. Discussion of this fundamental question still goes on and is likely always to go on. In the meantime the law must have some practical criterion and in fact, under the surface and covered by many theoretical disguises, courts and jurists have weighed and valued conflicting claims by attempting to secure as much as possible of the whole scheme of interests with the least sacrifice. Perhaps the juristic theorist can do no more than make explicit and give precision to the method which has actually obtained. Details must be worked out empirically. Compromises and adjustments must be sought through a process of trial and error. Each legal system has and very likely each will

always have its own solution for many cases of conflicting and overlapping claims. Comparative law must always reckon with a certain impossibility of arriving at an absolute valuation. But the jurist may well aim at all times and in all the compromises and adjustments which are involved in the legal order at giving effect to as much of the whole body of human claims and desires as possible.

As a result of the functional attitude toward law the problem of the scope of legal action has come to be recognized as involving something more than logical or metaphysical limitations. In the nineteenth century it was supposed that certain things were to be dealt with by law because that mode of ordering them could be deduced from a fundamental, metaphysically given datum of free will. Other things were to be left untouched by law because restraint of freedom in those respects did not follow logically from the idea of free will. Contemporary jurisprudence is more likely to ask what are the practical limitations upon the scope of law. It is apparent that there are limitations upon effective legal action but they are taken to be inherent in the nature of our legal machinery and are not attributed to some metaphysically demonstrated or logically imposed barrier. Thus with improved machinery the limits of effective legal action may be extended. None the less, there is much that cannot be done well by means of law and what that is must be ascertained through a theory of values. Where legal interference sacrifices values other means of social control must be relied upon. Here the law can do no more than preserve a social order in which these other means may operate effectively.

It remains to say that there are certain practical problems to which jurists of today are giving much attention. First among these perhaps is improvement in the form of the law, whether by codification of parts of the law or by unofficial restatement, such as that being carried on in the United States under the auspices of the American Law Institute. Another matter of scarcely less importance is the devising of an effective legal apparatus for ascertaining the social facts involved in lawmaking and in the judicial finding, shaping and application of legal precepts. In Europe ministries of justice are important agencies for this purpose. In the United States there is no organized study of the functioning of our legal institutions, the application and enforcement of law, the cases in which and reasons for which it fails to do

justice or to do complete justice, the new situations which arise continually and the means of meeting them. There is no systematic inquiry as to what legislation achieves its purpose and what does not and the reasons underlying both success and failure. There is no expert and intelligent guidance to those who frame and those who administer the laws. Both in England and in the United States ministries of justice or some equivalent institution have been urged. Sooner or later something of the sort will have to be set up in English speaking jurisdictions, as the present system is wasteful and ineffective.

Preventive justice is another subject to which juristic activity must be directed. Something has been done through juvenile courts and administrative agencies of probation and parole. But for the most part what is done by way of preventive justice in the criminal law is achieved through extralegal agencies. On the civil side of the law there has been an increasing development of preventive machinery, but study of the possibilities of preventive justice has only begun. The legal science of tomorrow will have few opportunities more promising than the directing of creative energy toward new methods, new precepts and new machinery for preventive justice.

Finally, there is the problem of individualizing the application of law in a society demanding individualized treatment of many things with respect to which it was not needed in the simpler, rural, agricultural society of the past. Where points of contact between men are relatively few, rules of law may suffice for the exigencies of justice. When the points of contact are enormously multiplied, as in the great city of today, when individual claims conflict and overlap on all sides, it becomes necessary to have fine lines and delicate discriminations, which are not easily made by means of rules of law. The demand for individualization has brought about a multiplication of administrative boards and tribunals in the United States and a constantly increasing resort to administrative action in Great Britain. The legal science of the past ignored everything but mechanical logical application of rigidly defined precepts. Today jurists recognize an administrative element in the legal order. It is recognized that in many fields individualization of the application of legal precepts is quite as important as the precepts themselves.

ROSCOE POUND

*See:* LAW; COMPARATIVE LAW; JUDICIAL PROCESS;

JUDICIARY; LEGAL PROFESSION AND LEGAL EDUCATION; JUSTICE; NATURAL LAW; INTERESTS; SOVEREIGNTY; COURTS; JUSTICE, ADMINISTRATION OF.

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## JURY

ENGLAND AND THE UNITED STATES. Trial by jury is the characteristic mode of determining issues of fact at common law and hence in actions at law in those countries where English law prevails or is the basis of the legal system. A common law court could pronounce judgment only upon the pleadings (the statements of their case by the respective parties) or the verdict of a jury determining an issue raised by the pleadings. Hence the pleadings were directed toward framing an issue to be tried by a jury and the trial procedure and law of evidence were shaped by the exigencies of that process. Along with the doctrine of precedents and the doctrine of the supremacy of the law trial by jury is one of the characteristic legal institutions of the English speaking world.

A jury is described by Maitland as a body of neighbors summoned by a public officer to answer questions upon oath. Historically this is quite true. It is precisely these characteristics, summons by a public officer, answering some question or questions put to them by a public officer and answering upon oath, which are common to a grand jury, a petit jury, a coroner's jury, a jury in condemnation proceedings or a jury in inquest of office found. If these different types of jury hear evidence and make presentments or find indictments or hear evidence

and try issues or pronounce as to the cause of death or view and value land or determine the alien character of one who is found holding land, yet they have developed functions of hearing and trying as incidental to the primary one of answering questions put to them. In origin the jury was an administrative device. It came to be used chiefly in the courts but is still not wholly confined to the courts, as some of the above cases suffice to show.

When jury trial as a characteristic institution of English law had come to be regarded as a bulwark of liberty, standing between politically organized society and the individual citizen and securing the latter against oppression, it was sought to trace the jury to the Anglo-Saxon period. In the time of uncritical history it was attributed to Alfred, who had nothing to do with it. Later its origin was sought in the doomsmen of the old local courts or in the compurgators. Also a somewhat analogous institution in Scandinavian law was taken to be the original during the enthusiasm for Germanic law in the last century. More especially after the contests between courts and crown in the seventeenth century two famous phrases in Magna Carta were taken to guarantee jury trial to the ordinary Englishman. But as it stands in the great charter the phrase "law of the land" includes all the modes of trial then usual. It has no particular reference to jury trial. Moreover the phrase "lawful judgment of his peers" has no reference to the jury. "Judgment of his peers" refers to the trial of a vassal by his fellows in the court of their lord. It means something of which there is still an example in the trial of an English peer in the House of Lords or before his fellows in the Court of the Lord Stewart. Jury trial did not grow up from any of these modes of trial. It became a mode of trial after beginning as something else.

The clearly established and authentic history of the jury goes back to the ninth century. In 829 the emperor Louis the Pious, successor of Charlemagne, directed that thereafter royal rights should be ascertained not by witnesses produced by the parties interested but by the sworn statement of the best and most credible persons in the locality. At that time the rights of the crown rested in custom. The custom was to be declared by twelve neighbors upon their oath. It is possible, but the connection has not been established, that this administrative device was taken from a bit of Roman administrative machinery to be found in the fifth century

in the Theodosian code. At any rate it was taken over from the empire of the Carolingians to the Duchy of Normandy and thence to England. At first it was used by the government as a means of ascertaining and establishing its rights and was called an "inquisition," a term of which some memory still lingers in old forms of presentment and indictment and in "inquest of office found." A Norman duke or an English king sometimes granted to private persons or to churches the privilege of having their rights ascertained in this way. In Normandy in the twelfth century inquisition was made the ordinary mode of trial for all important civil litigation. In England soon afterward a series of enactments allowed it generally as an alternative mode of trial. From these enactments, which were called *assizes*, the inquisition of twelve men in certain proceedings got the same name.

After the Norman Conquest the inquisition went on as an administrative device to obtain information required by the government. Thus *Domesday Book* is a collection of answers by neighbors as to who owned land and other matters relating to land which the government needed to know for the purposes of taxation. In the twelfth century the inquisition was used to ascertain the customs to the relations of church and crown and to discover crimes and criminals. Forfeitures and fines for crime were an important source of revenue. Hence it was important to compel the neighbors to answer the questions of the sheriff. By the last third of the twelfth century it was established as the regular mode of obtaining presentments of criminals and was thus on the way to becoming the grand jury.

In mediaeval England trial by jury was not a logical but a mechanical mode of trial. In a logical trial, such as one before an Athenian *dicastery* or a Roman college of *judices*, the case of each litigant is made out by evidence and fully argued as to the points in dispute. The beginnings of law do not provide such trials. A chief purpose of law in such a stage is to keep the peace, and in times when groups of kindred were ready on small provocation to redress the injuries done their kinsman it was not politic to add a controversy as to the weight of evidence and argument to the controversy under adjudication. A single, simple test, as to whose application and outcome there could be no question, had to stand for the determining agency. At first and for a long time jury trial was of this type. The jury was a body of wit-

ness triers, responding to the exact single issue submitted to them by a verdict pronounced on their general knowledge as representatives of the neighborhood. Jury trial was extended at the expense of the other mechanical modes of trial partly because potentially it was a mode of logical trial.

In mediaeval English law the chief modes of trial were ordeal (hot iron, boiling water, cold water and the morsel), wager of law, and battle. But in 1215 the pope forbade the clergy to take part in the ritual of ordeals, so that these became obsolete as a regular mode of trial. In the thirteenth century trial by jury had superseded all the mediaeval forms of trial for criminal cases. The civil jury as it is today is derived from the old criminal jury. It comes to us through the action of trespass, which originally was criminal but became civil. By the end of the fifteenth century it was very near its modern form; it had become a body of impartial men who heard witnesses and returned verdicts on the evidence.

Three far reaching changes operated to bring jury trial into the order of reason and impart to it some degree of certainty: first, the practice of hearing witnesses and the development of a technique of trials; second, the working out of a rational system of review of verdicts; and, third, the development of the law of damages, which established an authoritative measure of damage for all important situations. The first was achieved in the Middle Ages. The second was completed about the time of the American Revolution. The third was still proceeding in the nineteenth century. Already in the Middle Ages, after beginning by summoning the named witnesses in order to assist the jury, it had become customary to examine other witnesses before the jury to help it to arrive at its verdict. Thus the characteristic common law method of trying cases as a whole, not in detached fragments as in civil law countries, grew out of jury trial. In mediaeval practice the only mode of reviewing a verdict was by the clumsy process of attain, going back in its theory to the time when jurors were not triers on the evidence but told the court what the neighborhood knew. A new jury of twenty-four tried the first jury for perjury. If the first jury was found to have returned a wrong verdict, the jurors were imprisoned, they became infamous and their property was confiscated. Not unnaturally jurors were unwilling to subject a former jury to the severe penalties involved and by the reign



of Elizabeth attaint had ceased to be much resorted to. In the sixteenth century a new way of controlling the actions of jurors was sought in the Star Chamber, which began to punish them for verdicts against obvious evidence. But because of the political prosecutions of the sixteenth and seventeenth centuries this was a dangerous power in the hands of an administrative tribunal controlled by the crown and in Bushel's case, decided in 1670 (Vaughan, 135), it was settled that the obsolete attaint was the only legal pressure upon a jury. Indeed in that case Chief Justice Vaughan went so far as to say that a jury ought to be completely free from direction from the bench. The reasoning of the court is interesting: the jury might have acted on evidence unknown to the court. It is apparent that the conception of the jury as a body of witness triers still survived.

In the Middle Ages courts had allowed new trials for misconduct of jurors, and during the Commonwealth the upper bench took the notable forward step of granting a new trial for an award of excessive damages against the charge of the court. After the Restoration this decision was questioned, but the practise of granting new trials was not established until the eve of the American Revolution. As to the legal measure of damages, Sir Edward Coke had said that the jury were chancellors, in other words, that they had an uncontrolled discretion. It was not settled that there was a legal measure of damages in cases of tort until the nineteenth century, and a remnant of the power to award damages as the jury likes still exists in cases of punitive damages for wilful and wanton wrongs.

Political prosecutions for libel in the eighteenth century led to Fox' Libel Act of 1792 making the jurors judges of the law as well as of the facts in such cases. Except for this one crime, however, there has been a steady development in England toward complete judicial control of jury trials and full exercise of the common law power of the courts to advise on the evidence and direct verdicts in accordance with the law. The colorless type of charge to juries which Dickens satirized in the *Pickwick Papers* became a thing of the past in the last quarter of the nineteenth century. Jury trial had been developed into an effective instrument in England about the time that the civil jury was to become moribund.

At common law the jury was selected by the sheriff upon a writ requiring him to cause twelve good and lawful men of the vicinage to come to

serve as jurors. If the jurors were not properly chosen or not qualified, there might be a challenge to the array; that is, the whole panel might be challenged. If particular members of the panel were subject to objection there might be challenges for favor; it is an interesting result of the conception of jurors as witness triers that the causes of challenge were taken from the rules of the canon law as to the competency of witnesses. These challenges were tried by triers appointed from the qualified jurors. There might also be a certain number of peremptory challenges for which no reason need be given. If twelve qualified jurors did not remain, the sheriff was directed to bring in a certain number of qualified men from the bystanders—*tales de circumstantibus*—called talesmen from the first word of the term describing them. The panel now being full, the jury was sworn "well and truly to try the issues and a true verdict render." At this point the trial technically begins. Junior counsel for the party having the burden of the issue then opens the pleadings, stating briefly the nature of the case and the issue to be tried; and senior counsel for that party opens his case, setting forth the case as his client claims it to be, what he expects to prove and how he expects to prove it. He then calls his witnesses and examines them orally before the court and jury, after which they are severally cross examined by counsel for the adverse party. When all the evidence for the party which has the burden of the issue has been presented, counsel for the opposing party addresses the jury, commenting on the case made against him, setting forth his version of the facts and stating, if he intends to produce witnesses, what he expects to prove and how. If witnesses are called they are examined and cross examined and counsel for the party having the burden replies. In a civil case if as a matter of law there could be only a certain verdict, the trial judge may direct the jury to return that verdict and it is entered on the record accordingly. But in a criminal case only a verdict of not guilty can be so directed. If there is a sufficient case to go to the jury, the trial judge then charges the jury; that is, addresses them orally, explaining the issue or issues on which they are to pass, stating the law applicable thereto, summing up the evidence on each side and, if he thinks proper, discussing and commenting upon it. The jury may find a verdict on consultation with each other without leaving the jury box or

they may retire to the jury room in charge of an officer of the court. Originally jurors were kept there without food or drink until they agreed on a verdict; a mediaeval judge even threatened to put them in a cart and take them about with him at circuit until they reached an agreement. But in modern practise if the court becomes satisfied that they cannot agree, the jury is discharged and the case is retried before another jury. When they agree (for at common law the verdict must be unanimous) their verdict is delivered orally in open court by the foreman and the jurors are then asked collectively if that is their verdict. If they say that it is, a party may ask that the jury be polled; namely, that each juror be called by name and asked if that is his verdict. If all are agreed, the verdict is entered on the record and the jury discharged; if not, they may be sent back for further deliberation. Instead of a general verdict in the very terms of the issue there may be a special verdict: the jury may find the facts in detail and pray the judgment of the court as to how the issue should be found in view thereof. This practise comes from the days of attain, where the jurors sought to avoid the risk of a wrong verdict on a doubtful point. It is used where the facts are not disputed and only the legal result is doubtful. The special verdict is drawn by counsel and formally agreed to by the jury. The trial judge may submit special questions to the jury along with his charge or when the verdict is announced but before it is recorded and take the answers of the jury thereto. The issues being thus determined, it remains for the court to give the judgment which the record requires.

Such is jury trial at common law. It has, however, been much modified in its details in the United States, and most of the features which are now felt to call for reform grow out of those modifications. When jury trial was brought to this country in the seventeenth century, it was still essentially mediaeval. The practise of granting new trials where a verdict was clearly against the evidence was still in its beginnings. Much of the judicial guidance or control which is required to make jury trial efficient was still to be developed in England. In many of the states of the United States new trials were granted only for the mediaeval reason of misconduct of the jury and in effect the jury is as uncontrolled as in the seventeenth century. In other states it has required statutes to give the courts power to review

verdicts rendered against the evidence, and the statutory provisions, made too often with reference to some particular miscarriages of justice, have not always been drawn wisely or well. Unfortunately the legal checks upon the jury were developed independently and under pioneer conditions. The results, when functioning in the urban, industrial America of today, contribute not a little to current dissatisfaction with the system.

But the chief cause of dissatisfaction is to be found in the excessive powers which have been committed to jurors in the several states. The jury had grown up as representative of the local community. The jurors were not witnesses testifying. They were representatives of the knowledge and traditions of the locality. This representative character of the jury appealed powerfully to colonial, to pioneer and to democratic America. Then too in the seventeenth century struggles between courts and crown juries had proved an effective check upon the crown. Juries had used their power of rendering general verdicts and the legal requirement of a verdict as the basis of a judgment to thwart royal attempts to enforce certain laws peculiarly obnoxious to Whigs and Puritans. The colonists who had the most weight in determining American institutions came to the New World with a strong dislike for efficient law enforcement and bias for jury lawlessness. This was confirmed for lawyers by the account of the jury as steadfastly upholding the immemorial rights of the ordinary Englishman against arbitrary governmental action which they found in Coke's *Second Institute* and in Blackstone. It seemed to Americans more important to preserve the jury as a bulwark of political liberty than to make it an efficient tribunal. This feeling was reinforced by jury resistance to colonial governments on the eve of the American Revolution and by jury resistance to unpopular legislation during the rise of Jeffersonian democracy. The political importance of the largely uncontrolled or ill controlled powers of the seventeenth century jury, as it was brought to America, led Americans to assume that resistance to laws was more important than enforcement of law and to exaggerate the scope of jury lawlessness. There was even a tendency in some states to extend jury trial to equity, where historically it had no place, and when law and equity powers were given to the same courts to be exercised in the same proceedings, to assume that in the fused procedure issues of every sort were to be

tried by juries. But on the whole the historical view prevailed in this particular connection and jury trial was confined to legal as distinguished from equitable features of the combined proceeding.

But the most characteristic feature of American development of jury trial is limitation of the common law powers of the trial judge. The New World had been settled in large part by colonists who sought to escape the religious and political prosecutions in which masterful judges had played a conspicuous part. Subsequent immigrants brought with them memories of the trials in which Jeffreys showed the terrible possibilities of a strong personality on the bench taking charge of a prosecution. The tradition of such judges, reinforced by the conduct of some royalist judges in the events which led to the revolution, and the conduct of some strong federalist judges at the end of the eighteenth century, created a deep seated jealousy of the trial judge which has persisted in American legal and judicial institutions. While English legal institutions were adopted in other respects, radical departures were made from the English model in respect of the powers of trial judges. It is significant that this jealousy does not extend to equity judges or to judges of appellate tribunals. The scope of injunctions has been greatly extended. Appellate judges are allowed powers with respect to legislation which no other judges exercise anywhere. But Americans have been and on the whole remain unwilling to allow trial judges in actions at law the authority without which justice cannot be administered effectively in the society of today. It is true that in the federal courts the judges have retained their common law powers. Yet here too in many parts of the country the circuit courts of appeals have been cutting down those powers on the analogy of the state practise.

American states very early began their departure from common law rules by requiring the charge of the court to the jury to be in writing, and generally throughout the land by custom, judicial decision or legislation trial judges were deprived of the power to comment on the evidence or discuss its weight or advise as to its application. Many jurisdictions confine the charge to the giving of abstract written "instructions" on points of law involved. Some make the jurors judges of the law as well as of the facts, in criminal cases at least. Many take the power of fixing the sentence away from

the judge at least in offenses of great seriousness and commit the measure, duration and form of penal treatment to the trial jury. Some of the causes of this shearing of judges of their common law powers have been referred to. To these it should be added that for a long time and in many jurisdictions colonial justice was administered by magistrates who had no special competency to advise or assist juries. But most of all it must be borne in mind that pioneer communities were caves of Adullam to which everyone who was in debt or in distress or discontented repaired to begin anew, and the Adullamites had no desire that their creditors pursue them into the wilderness. Extravagant powers of juries uncontrolled by judges appealed to the pioneer, not only because an unfettered jury trial afforded a spectacle in times when the theater, the moving picture, the radio and the automobile were not at hand but especially because jury lawlessness and pitfalls of procedure were often the only defense. Later the ideas and practises to which these conditions gave rise were taken advantage of in the contests between habitual plaintiff's lawyers and habitual defendant's lawyers which went on in all American courts after the rise of great public service and industrial corporations with permanent and well organized legal departments. One group relied on the power of juries to render general verdicts free from control by the courts; the other on a highly technical procedure full of pitfalls which provided opportunities for setting aside verdicts and obtaining new trials. The elaborate codes of civil procedure which prevailed in the second half of the nineteenth century and the hypertrophy of appellate procedure, serving as a check upon review of jury trial for "error," are to be explained in large part by this contest. Moreover the weakness and tendency to abdicate such powers as they had, frequently manifested by trial judges elected for short terms, served still further to render jury trial in this country inefficient and unsatisfactory.

In contrast with its great popularity in the eighteenth and nineteenth centuries the jury system is now almost everywhere under attack. All American constitutions guaranteed it as essential to liberty and free government. Today it is being modified or restricted on every hand or is becoming disused. In England, while the jury in criminal cases operates well and is not criticized, the jury in civil cases is almost obsolete. There is now a well established prac-

tise of resorting to it only in cases involving legitimate appeal to the emotions, such as assault and battery, malicious prosecution, false imprisonment, defamation and breach of promise of marriage. In the United States waiver of jury trial or reference of cases to referees or auditors has become increasingly common. In a growing number of jurisdictions a civil jury is not to be had unless expressly demanded. In some of these when one demands a jury he must advance at least a part of the expense. Moreover the growth of administrative tribunals at the expense of the common law jurisdiction of the courts and the development of elaborate machinery for commercial arbitration are due largely to distrust of civil juries and are means of avoiding them. To this growing disuse must be added a long list of modifications which indicate a moribund institution. Majority verdicts are now allowed in many jurisdictions. In some the jury is required to answer in writing a large number of special questions. In some the scope of special verdicts is increased and the practise of finding them is facilitated. It would serve no useful purpose to go into details or to specify jurisdictions. There is so much legislation and changes are so frequent and differ so much in detail that any exact statement would be out of date almost before it was off the press. Suffice it to say that continual tinkering with the civil jury has achieved little improvement and is not likely to do so unless and until the common law powers of the trial judge are fully restored. There is danger that before this fundamental reform can be brought about confidence in the civil jury will have been so wholly lost that no reform can re-establish it. As to the jury in criminal cases, that also is under attack generally but more as the result of the changes made in pioneer America than from inherent defects in the common law institution. A criminal trial before a jury made judge of law as well as of facts, with the judge restricted to the position of an umpire in the almost unrestrained contest of counsel, with the duty of fixing the penalty left to the jurors and so made to complicate the question of guilt, with the charge of the court reduced to a written dissertation on abstract points of law, is not a jury trial in the sense of the common law and is not the jury trial which made that institution one of the glories of English law. As it is, the steady growth of waiver of jury trial in criminal cases and the extension of summary criminal jurisdiction

present a story very similar to that of the civil jury.

There are compelling reasons for believing that the jury in criminal cases will endure. As a device for political education of citizens who do jury duty its importance has perhaps been exaggerated. Such education is expensive and is less necessary under the conditions of diffusion of information today than it may have been in the past. But the jury of the vicinage is a truly representative institution, and a representative local judgment upon conduct has a value which atones for many shortcomings. The bad features of the jury system in criminal justice in America are mostly traceable to want of control and want of power of control by the trial judge and the abuses which have grown up in consequence. Thus in an American state criminal trial of any importance it is usual to take up many days in elaborate and detailed examination of prospective jurors in order to secure an absolutely unbiased panel. Where a jury has extravagant powers and the trial judge can do no more than give academic explanations of abstract points of law this may be necessary, but it is significant that no such protracted examinations are heard of, because they are not needed, where the judge has and exercises the common law powers.

It must be remembered that the jury in criminal cases served as one of a long series of mitigating devices in criminal procedure. That list is now excessively long in America: the discretion of peace officers as to whether or not they shall report or arrest offenders; the authority of the magistrate to discharge upon preliminary examination; the power of the grand jury to ignore indictments; the discretion of the public prosecutor as to whether or not he shall prosecute; the authority of the jury to acquit by general verdict in the face of the evidence; the discretion of the judge to grant a new trial; the discretion of the judge as to sentence, suspension of sentence and mitigation of sentence; the individualizing power of administrative officials by way of parole; the executive power of pardon. This long list comes down from the era of capital punishment for all serious offenses and the later era of political prosecutions. Obviously it is much too long. But there are other points at which to strike, especially in the American additions to the list as it stood at common law. On the other hand, the jury system in criminal cases stands in need of much improvement. The rapid growth of en-

forcement of laws against vice by injunction rather than prosecution is due largely to the ineffectiveness of jury trial for such cases. Indeed with the rise of the problem of enforcing law in the urban, industrial society of today a much more efficient criminal trial system is imperative.

As to the civil jury it has been much overworked in the United States. It was a good tribunal in the old time rural, agricultural society, where the jurors knew the men and the things involved in local litigation. But the city dweller of today seldom knows his neighbors and the range of his interests and knowledge is specialized. Most of all, however, the civil jury is too expensive. It wastes the time of jurors, parties and witnesses beyond what is justified by any advantage it may have. In cities where courts sit to try cases continuously the year round the drain of jury service is serious and in the end those who would make the best jurors evade service because neither they nor the business of the community can afford to have them taken from their everyday work. If for no other reason, the expense of the civil jury as an ordinary tribunal for ordinary controversies is likely to make it obsolete in the economic order of tomorrow.

ROSCOE POUND

**OTHER COUNTRIES.** No institution of English law has achieved so universal a reception as the jury system. In the nineteenth century the jury, introduced into civil law countries, became virtually a world institution. If it is true that the English jury owed its origin to early forms of continental procedure—for Brunner's conclusions as to the royal and inquisitorial origins of the jury have been somewhat questioned since the appearance of the work of Meyer—the debt was thus amply repaid. It must not be supposed, however, that the transplanted institution was any more an exact copy of the English prototype than was the American jury. In fact it was not the English but the French jury, representing a considerable modification of the English institution, that served as a model for civil law countries.

The jury was ushered into continental countries as a result of the French revolutionary movement. It had been among the English institutions greatly admired by the French *philosophes*. With its oral and public procedure it seemed to them ideally suited to undermine the old secret inquisitorial procedure. Moreover

the substitution of the principle of the free evaluation of proof for the system of legal proofs seemed to make the jury imperative. Only a jury of citizens could be left free to judge on the basis of their own intimate conviction. Thus the *cahiers* of 1789 demanded the introduction of trial by jury in criminal cases, and the Constituent Assembly established it by the law of 16–29 of September, 1791. The jury system thus introduced survived through consulate, empire and republic. When its retention was debated in the State's Council in the course of the drafting of the Code of Criminal Examination of 1808, it was curiously Napoleon who was its staunchest defender, for the first consul realized that it would be a useful weapon in his hands against the old aristocracy. Established in some of the regions that were under the Napoleonic hegemony, the jury made its way very rapidly in the Latin countries, which in all matters followed almost precisely the Code of Criminal Examination.

Almost everywhere the triumph of the jury system was assured by the revolutionary movements of 1848. Its reception in all but a very few of the German states at this time proved decisive. The jury had been retained in the Rhine provinces after their emancipation from French domination, and a number of *causes célèbres* in those provinces made the jury a subject of great debate throughout Germany. German legal scholars became interested in the institution and there began in the 1820's the long series of German works devoted to its origins. For the period before the Frankfort National Assembly it may be said that on the whole the majority of German jurists were opposed to the introduction of the jury. Feuerbach shrewdly realized that it would not be a liberal agency until the forms of government of the European states were fundamentally modified. The enormously influential Mittermaier was at first opposed to it. But popular clamor for it was not to be resisted.

In the second half of the nineteenth century the jury continued its conquests and even made its way into the regions of benevolent despotism. In Spain it was suppressed in 1875 after a short trial but was restored in 1888. It was even introduced into imperial Russia in 1864. The German Code of Criminal Procedure of 1877 accepted the jury for the whole empire, and the end of the century saw it established in the Hapsburg dominions as well. It prevailed of course in most of the Swiss cantons, and while it encountered a good deal of resistance in the

Scandinavian countries Norway yielded in 1887. In fact the only important European country to refuse to admit it for any purpose was the Netherlands. Its acceptance in the Latin American countries was fairly general.

In France the jury system has undergone scores of changes since 1791, and it has often been somewhat modified in detail in the other civil law countries which have based their systems upon the French. But few of these have departed very radically from its basic principles. Where fundamental changes have been introduced they have been determined by the necessity of accommodating the jury to so many diverse forms of government.

In civil law countries the jury is not employed in civil cases, with the possible exception of its use to assess the value of property in condemnation proceedings, as in France. Moreover it is everywhere recognized that even in criminal cases the use of the jury is to be confined to the trial of major offenses. Thus the jury has been regarded in these countries as an exceptional institution from the very beginning. The dominant tendency has been to confine it to the trial of "crimes," using the term in the technical sense of the tripartite continental division of offenses into crimes, delicts and contraventions. The principle of unanimity in the decision of the jury has been rejected from the very first. The verdict is usually arrived at either by a simple majority or by a two-thirds vote. The present French law provides for the former; the German code of criminal procedure of 1877 required the latter.

The actual organization and conduct of a jury trial do not differ very radically from those which prevail under the Anglo-American system. Almost everywhere the jury has been composed of twelve jurors. They are usually chosen by lot from a small panel and provision is made for peremptory challenges as well as challenges for cause, but as in England there is no elaborate examination of talesmen. The most important difference between the continental and Anglo-American systems in the conduct of the jury trial is the absence in the former of cross examination of witnesses. The questions are put by the president of the court, and the only opportunity of counsel to attack the case of the prosecution is in the address to the jury. Since there are no strict exclusionary rules of evidence the witnesses usually have the advantage of haranguing the jury upon any point in any way related to the case. When the testimony is com-

pleted, a summary, or résumé, of it is made by the court. This feature was abolished in France in 1881 because of its abuse by ambitious presiding judges, but the prevailing doctrine is that the judge may summarize the evidence for and against the defense, provided that he does not comment upon it in any way. In the actual presentation of the case to the jury the civil law practise differs from that of the common law in a curious way. There is no general finding of guilty or not guilty. The jury is given a series of written questions to answer based upon various premises as to the facts, and the questions must be framed in such a way that they may be answered "yes" or "no." The practise in the framing of questions, which at times has run to a considerable degree of ingenuity, is reminiscent of the Roman formulary procedure.

The jury has everywhere been regarded as the "palladium of liberty," but devices have often been found in civil law countries for reducing its effectiveness in this role. The classes that might be opposed to the interest and desires of the government have sometimes been legally excluded from eligibility for service and a governmental functionary has been given a further right of scrutinizing the final lists. The best example is the composition of the jury under the Napoleonic regime: the basis of eligibility was made extremely narrow, and the prefect was given virtually dictatorial powers over the lists. The basis for the composition of the jury in France has changed in accordance with the character of the regime in power; the present liberal system rests upon the law of 1872. Another effective governmental expedient has been to limit the competence of the jury. Thus in autocratic countries political crimes and offenses of the press have been specifically excluded from its competence. In other words, the jury has been confined to the function of judging ordinary crime. Where the jury system was established in Russia, its use was excluded not only in political crimes but in such offenses as rape, bigamy and resisting arrest. The democratic countries on the other hand have specifically included within its competence delicts of the press and political offenses. In some countries jury trial has been provided only in the case of delicts of the press, as in Sweden. In Chile a law of 1872 provided for the trial of press offenses by a jury of seven.

In the present century a few gains have been made in the further introduction of the jury system: a constitutional guaranty of jury trial

was included in the post-war constitutions of Poland and Austria; and in 1924 the jury was introduced into imperial Japan except for political offenses. On the whole, however, the institution has been on the decline. It has been abolished in some Swiss cantons. In France there has been a growing practise of avoiding jury trial where possible by basing the prosecution upon such elements of an offense as will constitute it only a *délit*. This "correctionalization of crimes," as it has been called, is very reminiscent of the practise of American district attorneys in accepting pleas. Everywhere there has been a growing discontent with the jury system, and there are not many continental jurists who have much to say in its favor except in connection with press and political offenses. French jurists have pointed to the readiness with which juries in their country have acquitted in cases of sexual offenses and the great severity they have shown in cases of property crimes. Ferri and Garofalo give accounts of the functioning of Italian juries that are almost incredible. In some of the provinces, it seems, jurors have almost had fixed scales of charges. Verdicts of acquittal have been common when the accusation has been that of embezzling public money. In regions dominated by the Mafia and the Camorra juries have been continually intimidated.

The most serious threat to the continued existence of the jury system in its present form is a growing movement to turn the jury into a board of lay judges, called *Schöffen* in Germany and *échevinage* in France. The tradition of lay judges is an ancient one in Europe, going back to the *scabini* of the Merovingians. Indeed some of the early attempts of German scholars to trace the history of the jury attributed its origin to these lay judges. Although the difference between a lay judge and a juror has come to be recognized, a tendency has persisted to regard lay participation in the administration of criminal justice as the essence of the jury system. In a jury trial the whole judicial function is divided between the judges and the jury, while in a trial before lay judges there is no such division of function. The current movement aims to combine the permanent judges and the jury into one bench, acting as a unit in deliberating and reaching a decision as to both guilt and punishment. A court of *Schöffen* composed of one permanent judge and two laymen had existed in Germany under the code of criminal procedure of 1877 for the trial of various minor

offenses. Courts composed of various numbers of professional and lay judges had functioned also in other Germanic countries and perhaps elsewhere. Such mixed courts had existed in the French and Italian colonies even for the trial of serious offenses. In 1924 Germany abolished its jury system in the case of all major crimes and substituted for it a court to be composed of three permanent judges and six laymen to sit and deliberate together. Its competence was severely limited to treason, crimes of homicide and a few other offenses. The change was made under a plea of economy, and the new institution is still called a jury (not *Schöffengericht* but *Schwurgericht*) but it is such only in name. The advantage of combining the lay and professional judges is obvious. The former have the guidance of the expert knowledge and experience of the latter, and the processes of judgment as to law and fact, formerly separated, are advantageously united. But it is no less equally obvious that the lay judges will tend to be overawed by their professional colleagues. Moreover since the advice of the professional judges is no longer given to the laymen from the bench in open court, the guaranties of publicity no longer exist. It is significant that a system not unlike the German was introduced into Fascist Italy in 1931 and that a similar system is used in Soviet Russia for the trial of offenses in all criminal courts. The Soviet court is composed of a permanent judge and only two lay judges, and the verdict is reached by a majority.

When it is considered that the criminal jury has been on the decline in common law countries as well—England, the birthplace of the modern jury, has witnessed a tremendous growth of "summary prosecution," and in the United States waiver of jury trial is becoming increasingly common—one is forced to look beyond local causes for a fundamental explanation. It is doubtful whether procedural differences between common and civil law countries can be considered to exercise the decisive influence on the fate of the jury system. The rule of unanimous decision and the system of elaborate examination of talesmen have often been blamed for its decline, but civil law countries have complained of the jury although they have known neither. The mere power to comment on the evidence has never sufficed to control a jury that wished to go contrary to the judge's opinion. Continental jurists have recognized frankly that the separation of law and fact in jury procedure is chimerical. Everywhere the jury tends to be omnip-

otent, in fact if not in law. Even the legal exclusion of the popular and heterodox classes from the jury in some of the civil law countries can be overemphasized. Jury packing has not been unknown in England and in the United States, where such an exclusion is not provided for. In all countries, whatever the provision of law, the middle class tends to dominate in the jury system. An explanation for the dissatisfaction with the jury system should rather be sought in the fact that technically the jury represents a rather cumbersome procedure and politically a means for effectuating the will of the middle class. A great deal can be said for the jury, but it may as well be recognized frankly that efficiency in the trial of causes is not among its virtues.

#### WILLIAM SEAGLE

See: GRAND JURY; JUSTICE, ADMINISTRATION OF; PROSECUTION; PROCEDURE, LEGAL; CIVIL LIBERTIES; COURTS; JUDICIARY; EVIDENCE; EXPERT TESTIMONY; JUDICIAL INTERROGATION; APPEALS; VENUE; CONTEMPT OF COURT; ASSIZES; ATTAINDER; COMPURGATION; EQUITY; INJUNCTION.

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JUS GENTIUM as a Latin phrase might mean the law which governs the citizens of all nations or the law which governs the citizens of a limited group of nations or else the law which governs the nations themselves in their relations with each other. It is doubtful whether the second of these meanings was ever adopted, but the first and last were frequently attached to the phrase in ancient and in modern times and both have been fruitfully developed.

What were the gentes? Apparently not the Roman clans, which were ancient and important institutions, although there was a law that related to them and this law must at an early time have been of great moment. But this law was known as *jus gentilicium*, and the fact that it was never called *jus gentium* indicates that the latter phrase did not come into existence until the gentes as clans had lost importance and the gentes as national units had gained it. This must have happened some time before the completion of the conquest of Italy in the third century B.C.

The various instances of the occurrence of the phrase have in recent times been exhaustively collected. When they are carefully examined,

there ought to be little doubt that the earliest informal definition, that given by Cicero (*De officiis* III: 5, 23; III: 17, 69; and *Tusculanarum disputationum* I: 13, 30), contains the fundamental notion of the term. Cicero says that the *jus gentium* is the law which natural reason has established among all nations, and there is little reason for qualifying or doubting the accuracy of his statement. Certainly there is no real support in the sources for the supposition that the *jus gentium* was a non-Roman law, the law of non-Roman gentes, in the sense in which the word gentiles is used in the Bible. The *jus civile* is not contrasted with the *jus gentium* but as far as it was rational is conceived as a part of it.

It is necessary, however, to qualify the implications of the English version of Cicero's definition. The gens in his sense was a group of persons who professed a common descent and dealt with one another as people who had common interests and a certain amount of common responsibility. It was not necessarily an organized political unit. Every gens had certain peculiarities of its own. The *jus gentium*, since it was the law which all of them used, must be the common element in the *jura* of the several gentes. It was not, at any rate not at first, an ideal law which all men ought to follow but the body of common rules which gentes, however diverse, did actually follow. At a later period it was a favorite exercise of rhetoric to point out the extreme discrepancies that existed between the laws of various nations. But when the phrase *jus gentium* first came into common use in Rome, perhaps in the third century B.C., it is likely enough that the gentes envisaged contained few violently idiosyncratic examples.

The Roman must have thought of the *jus gentium* as containing no inconsiderable body of usages and of usages which were quite concrete and specific. The real question, however, is not so much what the *jus gentium* was but what its significance was. What was its relation to the ordinary law? Evidently a Roman magistrate enforcing law in the ordinary cases between Roman citizens would not be likely to appeal to it, since as far as it constrained him it was part of the *jus civile*, which he was bound to administer. But when he had to enforce law between Roman and non-Roman or when the Roman law as formulated in statute or in concrete customs was for one reason or another inapplicable even in cases involving only Roman citizens, the magistrate was required to act justly and conscientiously; in such cases it was a powerful confirmation of

conscience and justice to find a rule established in the common practise of all or nearly all nations, i.e. in the *jus gentium*.

It is evident, however, that when a doctrine of natural law is established, empirical institutions developed in the *jus gentium* might be found to be in contradiction to it. One such system of principles of justice, the stoic doctrine of natural law, did in fact classify several of the institutions of the *jus gentium*, for instance, slavery, as unjust or morally indifferent. And this particular form of natural law exercised a powerful influence on many stoic trained jurists. It is this doctrine, as quoted by Ulpian in the third century, which has been transmitted to modern times as the classic statement of what natural law was and how it differed from the *jus gentium*.

But the stoic doctrine was neither the only one nor the prevailing one among ancient jurists. In most cases they clung to Cicero's definition in which "natural reason" is given as the source of the *jus gentium*. When the gentes concerned were no longer the Italian states around Rome but a complex of nations extending from Britain to Mesopotamia and beyond, the common element in the practises of all of them could hardly be less than a law dictated by nature itself. It is so defined by Gaius in the second century. That is, there was no real difference among writers of this group between *jus gentium* and natural law. The later jurists used the terms interchangeably, and the Christian doctrine that natural reason is of divine origin strengthened rather than weakened the tendency to equate them. It may be said that there were as many kinds of natural law as there were philosophic schools or religious sects and that there was only one kind of *jus gentium*; but the two would of necessity coalesce.

It was inevitable that the larger and apparently more comprehensive term should be the more successful in the early Middle Ages; in the early schoolmen and publicists *jus gentium* is of rare occurrence, even though the popular cyclopaedia of the Middle Ages, Isidore's *Etymologies*, fully defines the term. Upon reading this definition one is struck by the fact that all the elements tabulated and listed in it are of a special sort. They have to do with matters which had at all times been declared specifically to be a part of the Roman *jus gentium* but which had been of little importance in the time of Rome's primacy.

This was the *jus gentium* in the sense of modern international law, the law that regulates the conduct of gentes among themselves. It is sometimes inaccurately said that modern interna-

tional law was the equivalent of the Roman *jus fetiale*, or fetial law. This latter, however, was merely a special type of ritual used in declarations of war and in one or two other incidents of war. Its implications were always magical or religious and its importance was slight. But the substantial elements that were concerned in the conduct of gentes toward each other were definitely called rules of the *jus gentium* by ancient writers. These were matters like the obligatory force of solemn treaties, the inviolability of ambassadors, and rules of warfare, all of which have clear enough analogues or derivatives in modern international law.

Isidore's definition was quoted verbatim in the *Decretum* of Gratian, the foundation of the canon law, and accordingly was something of an axiom among schoolmen. Consequently the publicists of the fifteenth and sixteenth centuries were not conscious of having devised a new term or of having made a new application of an old one when they used *jus gentium* to describe the law which under the conditions of the time had assumed a new importance, the law that attempted to govern the several nations in their relations, either warlike or peaceful, with each other. The *jus gentium* as a branch of the law of nature rather than as identical with it provided a common basis of intercourse for nations, which no longer acknowledged a common religious authority. It must not be forgotten that the *jus gentium* was itself a *particula divini juris*. Perhaps such a phrase as Vitoria's *jus naturale gentium* was an attempt at describing the special character of this revised aspect of natural law; but the expression *jus naturae et gentium*, Milton's "law of nature and of nations," was more generally used until the term international law, *jus inter gentes*, superseded it. The great Spanish Dominicans in the sixteenth century laid a natural stress on the religious sanction of the *jus gentium* as authoritatively determined by the church itself. There can be little doubt that the analysis of this special *jus gentium*, which is particularly detailed in Ayala, powerfully influenced Grotius, but his *jus gentium* was compelled to justify itself by self-evident principles of morality and by the rationalized practises of Christian peoples rather than by appeal to authority.

The *jus gentium* of Grotius did not require absolute uniformity of all nations. It was enough that it included many nations. It passed through a period of development not unlike that of the Roman *jus gentium*, since the immemorial practises and moral ideals of west European nations

had a noticeable common fund which gave an apparent reality and fixity to its rules. International law even in the early nineteenth century could sometimes be regarded as applying only to Christian nations. Obviously modern conditions could tolerate no such anomaly, particularly when non-Christian powers, like Japan, China and Turkey, had to be admitted into the family of nations. The *jus gentium* considered as a *jus inter gentes* has accordingly in its expansion once more placed itself on the basis of a general moral sense, and its obligatory character has often been derived from that fact.

If *jus gentium* became limited to *jus inter gentes* in the early Middle Ages, the doctrines of the conflict of laws, which are usually traced to Bartolus, bid fair to recreate a kind of common *jus gentium* in the older sense. This branch of the law requires the application under definite conditions of a foreign law. The selection of the conditions, however, is based on principles of fairness assumed to underlie the application of any law not specifically statutory. And there is further a moral valuation often placed upon the foreign law before it will be accepted. This leaves at the bottom of the principles of the conflicts of law a certain modicum of *jus gentium* which is capable of considerable extension.

Again, all the tendencies of the study of comparative law have been to assimilate the laws of the countries compared. The mercantile law of Europe was from the beginning a sort of *jus gentium* and is becoming even more so under the pressure of commercial needs. The countries of continental Europe are in a fair way to produce a common private law of obligations, which has already exercised an attractive force on the Anglo-American law of contract. While the movement is consciously only in the direction of a *jus gentium* considered as a segregation of common elements in existing historical systems, it is inevitable that the necessary compromises must meet the test of fairness. Thus a *jus gentium* in the sense of a law common to the majority of civilized communities is not an impracticable ideal for the present and the concept has not lost its vitality.

MAX RADIN

See: INTERNATIONAL LAW; ROMAN LAW; NATURAL LAW; COMPARATIVE LAW; CONFLICT OF LAWS.

Consult: Weiss, Egon, in *Real-Encyclopädie der klassischen Altertumswissenschaft*, ed. by Georg Wissowa and Wilhelm Kroll, vol. x (new ed. Stuttgart 1919) cols. 1218-31; Nettleship, Henry, in *Journal of Philology*, vol. xiii (1885) 169-81; Mitteis, Ludwig, *Römisches Privatrecht bis auf die Zeit Diokletian*,

*Systematisches Handbuch der deutschen Rechtswissenschaft*, sect. i, pt. vi, vol. i—(Leipzig 1908—) p. 62-72; Bögl, Hans, *Beiträge zur Lehre vom ius gentium der Römer* (Berne 1913); Perozzi, Silvio, *Istituzioni di diritto romano*, 2 vols. (2nd ed. Rome 1928) vol. i, p. 91-103; Karlowa, Otto, *Römische Rechtsgeschichte*, 2 vols. (Leipzig 1885-1901) vol. i, p. 451-58; Carlyle, R. W. and A. J., *A History of Mediaeval Political Theory in the West*, 5 vols. (Edinburgh 1903-28) vols. i-ii; Hershey, A. S., *The Essentials of International Public Law and Organization* (rev. ed. New York 1927), and bibliography p. 64.

JUS NATURALE. See NATURAL LAW.

JUST PRICE. Since the beginning of classical economics modern theories of value, whether objective or subjective, have viewed price as a purely market phenomenon. The just price, on the other hand, as a conception and as a doctrine is basically ethical rather than economic. In antiquity ethics was a branch of philosophy and the doctrines of the just price formed a part of philosophical systems. In the Middle Ages ethics was rooted in theology; and accordingly the just price was treated in theological works and in *summae theologiae*.

The general attitude of the Greeks toward economic matters is represented by Aristotle's conception of money and price. In the fifth book of the *Nicomachean Ethics* he sums up his views on this subject, which were constantly quoted, interpreted and developed by the mediaeval scholastic philosophers, with the terse phrase, "Thus has been explained what is just and what is unjust" (v: 9). Aristotle clearly perceived the importance of price in the exchange of commodities; and his emphasis on the place of labor time in the determination of prices has enabled modern theorists in both objective and subjective schools to hail him as their ancestor. But it is with the realization of justice rather than with price determination that the philosopher is concerned. Justice applies not to the inanimate but to the animate, not to the commodity but to the laborer; it is revealed not in the magnitude of an isolated unit but in the correct relation of that unit to the organic whole. Hence the just price does not attach to house or flour or shoe alone. There is rather a just price relationship between house and flour and shoe—a relationship corresponding to that between builder and farmer and shoemaker.

Individualistic Roman law made the determination of prices in commercial transactions entirely a matter of the legally free will. It is true that when mediaeval canon lawyers set out

to harmonize Roman law with the teachings of the church they discovered a rescript of the emperor Diocletian (*Corpus juris civilis: Codex* IV: 44, 2) which enabled them to read the Christian concept of an "objective" just price into the Roman code. This rescript aimed to prevent a too glaring disproportion between the contractual price and the "value" of a given commodity by guaranteeing redress to the seller in cases where the price amounted to less than half of the value. But in addition to the fact that it affected a trifling number of transactions the rescript was in essence un-Roman. It is indeed one of the clearest examples of the force with which the new Christian or rather oriental doctrines began in the third century to permeate and disrupt the Roman structure.

The Christians tried to base all important doctrines upon Biblical revelation. St. Paul's instruction to the Thessalonians that "no man go beyond and defraud his brother in any matter" (1 *Thessalonians* IV: 6) therefore acquired a special significance both for the church fathers and for the scholastics. It was from this source that Lactantius developed the doctrine that not only was it the duty of the seller to point out to the buyer the possible defects of the commodity but also that the buyer should never seek to profit by the seller's mistakes (*Divinae institutiones* V: 16). In St. Augustine's *De Trinitate* (XIII: 3) Paul's passage received a concrete illustration which for a thousand years it was virtually compulsory for writers on the subject to reproduce. It concerns the sale of a precious manuscript by an individual ignorant of the real value; the buyer—evidently St. Augustine himself—paid the just price (*justum pretium*), which was substantially higher than the one demanded.

How the just price was to be determined was a question raised neither by St. Augustine nor by writers during the following centuries which worshipped his authority. In the early Middle Ages, when over a wide area a natural economy had supplanted the money economy of antiquity and when significant changes in price occurred only as a result of crop fluctuations, it was easy to regard the traditional prices as just. At that time moreover the ethical precepts of the church had sufficient force to bind the faithful in every sphere of life. But in the eleventh and twelfth centuries the economic system began to lose its static character. A money economy reemerged in the Italian cities making it possible to satisfy new demands with new commodities; as a result of the crusades large

quantities of money and metals began to pour into the West. Once early capitalism had invaded the mediaeval structure, upsetting the existing social order as well as the traditional price system, the problem of what factors determined the just price could no longer be avoided. Albertus Magnus and Thomas Aquinas accordingly undertook the task of reconciling the traditional church doctrines with the ideas of the recently discovered Aristotle and with the new economic facts.

Albertus in his interpretation of Aristotle was the first to introduce the two concepts with which all the scholastics later tried to determine the just price: labor and cost (*labores et expensae*) (*Ethicorum libri* V: 2, 28). A more precise definition of the two concepts is attempted by Aquinas, who states that the measure of labor is labor time (*In X libros ethicorum ad Nicomachum* V: 5). Cost he leaves undefined, as might be expected in an age when industrial technique was only slightly developed and when there was little fixed capital and little variation between conditions and therefore costs of production. But for the determination of labor and cost taken together Aquinas stresses the significance of *conditio*, or social status: just as the worth of the person depends upon his class, so does the value of his service (*Summa theologiae* II: 2, 61, 2).

With this conception of the just price Aquinas was able to add an economico-ethical justification for the position of moral theology with regard to usury and interest. Commutative justice, he declares, is violated whenever the debtor forfeits more than the creditor (II: 2, 78). On the other hand, profit from commercial transactions is legitimate in so far as it represents a compensation for additional labor and cost, such as would be involved in transportation and storage. In such cases commercial profit is justified as *stipendium laboris* (II: 2, 77, 4). Thus it is incorrect to say that the just price as formulated by Aquinas and later scholastics was entirely devoid of economic content. What distinguishes it from all modern theory and practise is that it recognizes no validity for economic activity as such nor independent economic norms. Its law is derived from theological doctrines and from the philosophy of mediaeval class society. Because the just price was essentially not an economic but an ethical and social concept it did not necessarily coincide with the market price, which Aquinas calls *pretium datum*. For the same reason it was a component of the

objective order of things and was based on natural law: human society could not endure without just buying and selling and the just price (II: 1, 95, 4).

The social function of the doctrine was to prevent material gain from becoming the sole motive of economic activity, to extend the Christian way of life to the economic sphere and to safeguard the traditional social structure; its fate therefore depended upon the strength of the faith and of the church and on the authority of the secular power. As these declined progressively between the thirteenth and sixteenth centuries, giving way before the dynamic money economy or even succumbing to capitalistic practises, the possibility of retaining the doctrine in its rigid form diminished correspondingly. To keep pace with economic development thinkers like Henri de Gand, Duns Scotus, Buridan, Nider, Langenstein (Henricus de Hassia) and others continuously offered additions and modifications. A comprehensive system integrating and supplementing these ideas was presented early in the Renaissance in the *Summa theologiae moralis* of Antonino of Florence (4 vols., Venice 1479-80; new ed. Verona 1740).

At a time when the rise of a new artisan and merchant class to wealth and political power had given striking evidence of the changes in the economic set up and of the dissolution of the static order by the forces of capitalism, it was no longer possible to make the preservation of the mediaeval class structure the determining principle of the just price system. Antonino as well as Bernardino of Siena tried to justify the new economy before the bar of divine justice and natural law by recognizing as elements in the just price not only *labor* and *impensae* but also *industria*—the zeal, diligence and creative activity of the new entrepreneur. *Industria* was even legitimate excuse for the merchant to profit by fluctuations in prices and in money value. With this broad view a closer analysis could be made of the concept of cost, which the earlier scholastics had dismissed as a given, invariable quantity. Bernardino perceived that scarcity (*rarity*) was a presupposition of price, and remuneration for risk (*periculum*) a determinant. Antonino included as determinants both utility and scarcity and in addition a third element, the degree of pleasurable (*complacibilitas*). As a result of all these amendments price ceased to be treated as a numerically fixed magnitude: a margin was left for differences in person, place and time (*Summa* II: 1, 16, 3). In contrast to their

predecessors the late scholastic philosophers did not view the just price as a static norm; it became sufficiently loose to embrace dynamic market changes. Antonino distinguishes between three levels of the just price: the lower, intermediate and upper. In view of the uncertainty attaching to human calculations he makes allowance even for slight transgressions of these limits, although he is careful to add that "caution" should be observed in making this known to the public.

Despite this caution and despite the essential preservation of the principle of equivalence in exchange Antonino's doctrine of the three levels met the needs of early capitalistic economy. This is reflected most clearly in the surmounting of the difficulties which had been caused the scholastics by the problem of credit purchase and sale. Since the principle that time is not salable was the fundamental basis for the prohibition of usury, the scholastics were determined at all costs to keep it intact. They were therefore troubled by the fact that it makes a great difference to a merchant whether he sells a commodity for cash or on credit and that this difference is often revealed in the market price. According to Antonino's solution, if the intermediate level of the just price is accepted in cases of cash payment, then the upper level may be demanded in credit transactions (II: 1, 8, 1). Thus the gates of the church were opened to the emerging credit economy.

These changes, which necessarily affected the doctrine of the just wage—an integral part of the doctrine of the just price—and which were accompanied by similar amendment of the doctrines of capital, interest and usury, had important repercussions not only from the cultural and religious points of view but from the political and economic. As soon as justice was conceived as a sliding scale rather than an objective norm, the rigid barriers of social and political life were removed. Such governmental regulations as fixed prices lost their objective and metaphysical basis; the interests of the consumers, whose protection had been the chief object of the orthodox doctrine and the system of fixed prices, became secondary to the interests of the producers, who through the expansion of production upset the previous price system and discovered in price fluctuation itself a new source of profit. The extension of the doctrine of the just price, which reached its ultimate conclusion with Antonino, thus marks the point at which Christian theology abandoned its effort to save the

economic and social system of the Middle Ages.

The sixteenth and seventeenth century jurists who undertook the task of interpreting and developing the doctrine were too steeped in Roman law not to assign greater validity to the idea of the free contract in commercial transactions. Thus in analyzing the determinants of price Scaccia in his *Tractatus de commerciis et cambio* (I: I, 436) relegated cost and labor to the last place and isolated as the primary factors the intrinsic worth of commodities (*bonitas intrinseca*) and supply (*copia vel inopia*). In the eighteenth century, when the physiocrats and classical economists made economics an independent science, the scholastic doctrine lost all significance; henceforth it was of interest only to historians and theologians.

In spite of the virtual disappearance of the doctrine the just price as an idea has managed to survive in the most diverse guises. The "natural price" of the physiocrats is nothing but the old just price in a secularized form and in the new terminology of natural law. Adam Smith's "normal value" is an obvious survival of the old doctrine. The classical economists since Ricardo and the marginal utility and mathematical schools have, it is true, insisted upon the autonomy of economics and have banished from their science the idea of the just price along with all metaphysical notions. But the socialistic labor theory of value represents an attempt to revive the idea of a proper or correct price, although this price is determined not by transcendental justice but by social appropriateness. The most recent doctrines of the universalistic school represented by Spann have gone so far as to resuscitate the just price as a concept. Should events prove that capitalism has begun to decay, a concomitant development may well be the re-appearance of the "correct" and perhaps also of the "just" price as a regulative social principle.

EDGAR SALIN

See: CHURCH FATHERS; PRICE REGULATION; PRICE, VALUE; USURY.

Consult: Ashley, W. J., *An Introduction to English Economic History and Theory*, 2 vols. (4th ed. London 1906-09) vol. I, p. 132-63, vol. II p. 391-95; Endemann, Wilhelm, *Studien in der romanisch-kanonischen Wirtschafts- und Rechtslehre*, 2 vols. (Berlin 1874-83); Kaulla, Rudolf, "Die Lehre vom gerechten Preis in der Scholastik" in *Zeitschrift für die gesamte Staatswissenschaft*, vol. LX (1904) 579-602; Garnier, Henri, *L'idée du juste prix chez les théologiens et canonistes du moyen âge* (Paris 1900); Tarde, Alfred de, *L'idée du juste prix* (Paris 1907); Hagenauer, S., *Das "justum pretium" bei Thomas von Aquino*, Vierteljahrsschrift für Sozial- und Wirtschaftsgeschichte, supple-

ment no. 24 (Stuttgart 1931); Schreiber, E., *Die volkswirtschaftlichen Anschauungen der Scholastik seit Thomas von Aquin*, Beiträge zur Geschichte der Nationalökonomie, vol. I (Jena 1913); O'Brien, George, *An Essay on Mediaeval Economic Teaching* (London 1920).

JUSTI, HERMAN (1851-1909), American advocate of industrial conciliation. Justi was successively a clerk, statistician, merchant, bank president and coal operator. He was one of the leading and most influential originators of the practise of trade agreements and of the organization of employers' associations. Constant labor troubles, the violation of contracts and the emergence of a strong miners' union gave him the opportunity to put his ideas into practise. The five months' strike of the Illinois bituminous miners in 1897 made it evident that the temporary truce should be followed by permanent agreements and that the employers would be forced to organize for this purpose. Justi participated in the formation of the Illinois Coal Operators' Association and became its first commissioner, a position which he held until his death. The machinery set up involved no arbitration and constituted a sort of self-government for the industry. Representatives of the miners' union and of the operators met in annual convention to decide upon a general contract; minor questions or disagreements under the contract were settled by permanent machinery operating through the union's officials and Justi as commissioner of the operators' association. Similar machinery was soon created for the other states in the central bituminous coal district—Indiana, Ohio and Pennsylvania; operators and miners joined in conventions for interstate agreements and then for state, district and individual mine agreements. Justi actively propagated his ideas, which had considerable influence in spreading the form of industrial conciliation which he had been instrumental in setting up. Among his published writings, consisting of pamphlets and reprints of articles and speeches, are *Plans of Conciliation and Arbitration* (1900), *Conciliation and Arbitration in the Coal Mining Industry* (1902), *Arbitration, Its Uses and Abuses* (1902), *The Organization of Capital* (1903) and *The System of Joint Trade Agreements* (1905). Justi believed that the labor problem would be solved "in great measure" by universal adoption of trade agreements. "Worthy" unions should be recognized and employers should be organized into associations. He drew a distinction between the "consolidation" of capital to promote effi-

ciency and the "organization" of capital to deal with labor. "Strikes will occur," he said, "until organized capital can meet upon common ground and treat upon equal terms with organized labor." Justi proposed the organization of an American federation of industries (as a parallel to the American Federation of Labor) and a national board of arbitration, non-political in character and chosen by all the interests involved.

JOHN R. COMMONS

JUSTI, JOHANNES HEINRICH GOTTLÖB VON (1717-71), German cameralist. Justi, the leading representative of eighteenth century cameralism, taught at the Theresianische Ritterakademie in Vienna from 1750 to 1753 and at Göttingen from 1755 to 1757. In 1765 he entered the service of Frederick the Great as an administrator of mines. He died in the prison of Küstrin, to which he had been consigned in consequence of financial difficulties in his administration.

Encompassing the basic presuppositions of Justi's numerous writings on cameralistic and administrative science is the political theory which he makes explicit particularly in *Die Natur und das Wesen der Staaten* (Berlin 1760). An advocate of enlightened despotism, justifying the interventionist policy of Maria Theresa and Frederick the Great, he uses the postulate of the general happiness to provide an ethical foundation for the welfare state and explains the formation of the state by the social contract, entered into when the instinct for self-preservation impelled men to renounce their freedom. In these aspects of his doctrine he identifies himself with the mechanistic and rationalistic school represented by Wolff and Pufendorf, as in his general adherence to the mathematical method he belongs to the same group; but in conceiving of the social contract as tacit rather than express he is affiliated with the organic and evolutionist tendency inaugurated by Montesquieu. Justi stands in fact at the conflux of these two currents. The extended analysis of political forms on which he bases his adherence to monarchy is reminiscent of Montesquieu. He judges "internal administration" to be the center of gravity of the state's power. After reaching the conclusion that a stable balance of power is rendered impossible by the diversity of national character he recommends the formation of a universal monarchy in Europe.

The essential theme of Justi's economic doc-

trine is the importance of stimulating population. Increase of population, which at least up to a still unattained point cannot be carried to excess since its effect is a corresponding increase in means of sustenance, conditions the growth of national wealth. In order to regulate the food supply a suitable proportion might be established between industrial and agricultural enterprise. Such devices as tax exemption, subsidies and extension of building credit should be employed to encourage the influx of foreigners. Justi's monetary theory makes money the symbol of national wealth, the economic expression of political power. Subscribing to the quantity theory as formulated by Montesquieu but rejecting the *laissez faire* inferences drawn from the theory by French and English writers, Justi views prices primarily from the point of view of the producing interests. He devotes much attention to the problem of insuring a plentiful supply of working capital and to this end suggests borrowing abroad; various banking schemes for the better organization of credit—for instance, the foundation of a bank combining the features of mortgage bank and insurance company; the establishment of pawnshops and other credit institutions for the benefit of small scale artisans; and the creation of a *Manufacturhaus* to accelerate the sale of the finished products of the industrial class. Taking the ideal of economic self-sufficiency as his point of departure, he is more interested in effecting centralized control of industry than in commercial expansion. His demand for free trade is in line with his demand for the abolition of government price regulation, monopolies, trading companies and other privileges. He draws a sharp distinction between the "general" and the "particular" balance of trade. For the excise tax, the desirability of which constituted the principal problem of finance theorists of the time, he recommends the substitution of a tax on industry, arguing that the shifting of the excise would lead to a general and permanent rise of prices while only a partial rise would result from the tax on industry. Justi's significance for the development of systematic political economy lies in the fact that he endeavored to create a clear demarcation between this science, or cameralistics, and *Polizeiwissenschaft*, or the science of administration.

LOUISE SOMMER

*Works: Gutachten von dem vernünftigen Zusammenhange und praktischen Vortrag aller ökonomischen und Kameralwissenschaften* (Leipsic 1754); *Neue Wahrheiten zum Vortheil der Naturkunde und des gesell-*

*schaftlichen Lebens der Menschen*, 12 pts. (Leipsic 1754–58); *Staatswirtschaft; oder, systematische Abhandlung aller ökonomischen und Cameral-Wissenschaften*, 2 vols. (Leipsic 1755, 2nd ed. 1758); *Grundsätze der Polizeiwissenschaft* (Göttingen 1758; 3rd ed. by Johann Beckmann, 1782); *Vollständige Abhandlung von denen Manufacturen und Fabriken*, 2 vols. (Copenhagen 1758–61; 2nd ed. by Johann Beckmann, Berlin 1780); *Die Chimäre des Gleichgewichts von Europa* (Altona 1758); *Die Chimäre des Gleichgewichts der Handlung und Schifffahrt* (Altona 1759); *Der Grundriss einer guten Regierung* (Frankfort 1759); *Die Natur und das Wesen der Staaten* (Berlin 1760); *Ausführliche Abhandlung von denen Steuern und Abgaben* (Königsberg 1762).

Consult: Sommer, Louise, *Die österreichischen Kameralisten in dogmengeschichtlicher Darstellung*, Studien zur Sozial-, Wirtschafts- und Verwaltungsgeschichte, nos. 12–13, 2 vols. (Vienna 1920–25) vol. ii, p. 170–318; Frensdorff, F., "Über das Leben und die Schriften des Nationalökonom J. H. G. von Justi" in *Gesellschaft der Wissenschaften zu Göttingen*, Philologisch-historische Klasse, *Nachrichten*, 1903 (Göttingen 1904) p. 355–503; Roscher, Wilhelm, "Der sächsische Nationalökonom Johann Heinrich Gottlob von Justi" in *Archiv für die sächsische Geschichte*, vol. vi (1868) 76–106; Menzel, Adolf, "Beiträge zur Geschichte der Staatslehre" in *Akademie der Wissenschaften*, Vienna, Philosophisch-historische Klasse, *Sitzungsberichte*, vol. xxi, pt. i (Vienna 1929) p. 458–66; Marchet, Gustav, *Studien über die Entwicklung der Verwaltungslehre in Deutschland* (Munich 1885) p. 271–335; Stüda, Wilhelm, "Die Nationalökonomie als Universitätswissenschaft" in *Sächsische Akademie der Wissenschaften zu Leipzig*, Philologisch-historische Klasse, *Abhandlungen*, vol. liv (Leipsic 1906–07) no. ii, p. 5, 32–36.

**JUSTICE.** The term justice is currently used in two senses: as representing, on the one hand, the faithful realization of existing law as against any arbitrary infraction of it; and as representing, on the other, the ideal element in all law—the "idea" which the law tends to subserve. It is only in the second sense that the term can have a separable and substantial meaning. But even in this second sense the idea of justice is often understood too broadly and is seen to merge with the entire content of morality. This generally applies to the extent to which law is undifferentiated from the entirety of moral and religious rules or to which philosophic conceptions are adhered to whereby such a differentiation is rendered impossible. It is only as one aims to establish precise distinctions between justice and moral and religious ideals that a clear conception of justice can emerge.

From this point of view the historical development of the idea of justice takes on meaning. Among primitive peoples religious conceptions,

particularly with regard to the survival of the soul and its destiny, are by no means based upon an unsatisfied sentiment of justice as they tend to be in the more developed religions; behavior in this world plays no part in the determination of the future state of the soul nor is immortality a compensatory justice. This is not to state categorically that religious representations in turn have no influence upon the idea of justice among primitive peoples. Their entire life and mental attitudes are imbued with these representations and their idea of justice is completely dominated by such of their mystical conceptions as their ordeals, human sacrifices and tabus.

In Greek civilization there were two opposing conceptions of justice—the popular conception as expressed in the tragedies and the philosophical conception as worked out by Plato and Aristotle. By the popular conception the gods were considered guarantors of human justice, which consisted primarily of submission to destiny; but the gods in turn were not required to observe justice in their conduct toward mortals. What stands out from a sociological viewpoint in this pagan conception of justice is the distinction made between two kinds of justice in its application to human relations: *themis*, or justice inherent in the life of the group, a disciplinary justice integrated with the functioning of the group; and *dike*, or justice external to the life of the group, a justice operative as between groups, families and individuals. Plato and Aristotle, while freeing the idea of justice from all connection with popular religion, failed nevertheless to distinguish sufficiently between justice and morals. This was due to their one-sided universalist conception, which tended to identify morals with the philosophy of law. Justice is, according to Plato, the supreme virtue which harmonizes all the other virtues. But since individual virtues are but reproductions in miniature of the virtues of the "social whole," which Plato considered as identical with the state, one could discover the nature of justice only by studying the harmony of the state. This harmony of the state—that is to say, justice—consists in each individual's accomplishing the task which the need of maintaining the social whole assigns to him; in other words, he must be a particular organ in the entire body. Aristotle modified this purely hierarchical conception of justice by admitting that justice implies a certain degree of equality; this equality might,



however, be either arithmetical or geometrical, the first based on identity and the second on proportionality and equivalence. Arithmetical equality leads to commutative justice, geometrical equality to distributive justice (to each according to his deserts). The second is the business of the legislator while the first is the business of the judge. Political rights and goods should be apportioned according to distributive justice; punishments should be imposed and damages paid according to commutative justice. Holding, as he does, that the supreme criterion of the good is the just mean or the equilibrium, Aristotle recognizes still a third aspect of justice: justice as a moving equilibrium which seeks to reconcile the demands of distributive justice with those of commutative justice. This conception recalls the antithesis in the popular mind between *themis* and *dike* without, however, completely coinciding with it.

Among the stoics justice is increasingly assimilated to the general law of the universe, to which all individuals considered as abstract and identical representatives of the human species must equally submit. This conception represents a transition toward the individualism of the Roman jurists, who borrowed the stoic philosophy and embodied it in their juristic theories. The definition of justice in the Digest (I: iv), "*Justitia est constans et perpetua voluntas jus suum cuique tribuendi*," inclines most to the commutative aspect of justice, but it combines it with the most pragmatic meaning of the term justice as the faithful realization of existing law.

In Hebrew thought the idea of justice passed through three phases corresponding to the three distinct stages in the life of Judaea: social justice, imposed and sanctioned by God; religious justice; eschatological justice. Before the first Exile justice was considered as an ideal principle having its basis in Yahweh and manifesting itself in human relations by benevolence, honesty and loyalty. During the Exile the idea of justice was transformed into "Pharisaic justice"—the strict observance of the divine laws and ordinances and rigorous fidelity to the rites. In the Hebrew prophets after the Exile the idea of justice may be regarded as a preparatory stage for Christian theories. Justice meant to the prophets the reentrance of the Israelites into the grace of God. It was the justice of salvation, of the peace and splendor of heaven and adumbrated the conception of justice among the pre-Augustinian church fathers.

The innovation that Christianity introduced into the conception of justice lay in its subordination to charity and love. Justice remains a purely theological and even eschatological idea, but being based entirely on grace it is to some extent differentiated from morality, which represents the incomparably more efficacious aspect of charity and love. And even this justice, surpassed as it is by charity, may not be realized, according to St. Augustine's teaching, except in the kingdom of God (*civitas Dei*), for it is nothing more than the harmony of the *corpus mysticum* encompassing the earth and the heavens. The visible manifestation of the *civitas Dei* being the church, it is only this institution which can constitute the stronghold of justice on earth. The state, independent of the church, has no connection with justice; it is a *latrocinium bene fundatum*—a deeply rooted brigandage indistinguishable in principle from other associations of brigands.

Into this patristic theory of justice Thomas Aquinas by reviving the Aristotelian tradition introduced some very considerable changes. He clearly distinguishes the *lumen naturale*, pertaining to man, from the *lumen divinum*, and in consequence the *lex naturalis* from the *lex aeterna*—human justice from divine justice. Thus there are other associations than the church—particularly the state—which may serve to advance justice, although the church as the manifestation of the *lex aeterna* stands supreme in this respect among all associations. Aquinas like Aristotle divides human justice into distributive and commutative justice but gives these terms meanings slightly different from the Aristotelian. With Aquinas commutative justice is the justice of contracts and exchange—an individualist justice. Distributive justice he understands in a more hierarchical manner than does Aristotle; the "all," in particular the state, whose harmony is achieved by this type of justice, he interprets not as a complex and objective equilibrium but as the creation of a commanding power, superimposing itself upon the community. What is most interesting about Aquinas' theory is the fact that it represents the first step toward the secularization of the idea of justice. It was the disciples of Aquinas—Biel, Almain and particularly Vasquez—who, in basing their theories on his conception that submission of the will of God to divine reason was immutable as well as on his differentiation between *lumen divinum* and *lumen naturale*, were the first to conclude that justice

would subsist even if there were no God—a thesis made famous in the seventeenth century by Grotius.

The complete secularization of the idea of justice could be accomplished only after the liberating effect of the Renaissance, which multiplied the worldly aspects of life, affirmed a way of salvation through activity that was peculiarly human and mundane and rendered society autonomous with regard to the *corpus mysticum*. But these secular consequences of Renaissance thought were not fully realized until the natural law school of the sixteenth and seventeenth centuries. The religious reformation and the political struggles unleashed by the Renaissance philosophy contributed in the sixteenth century rather to a reinforcement of theological conceptions of justice, as illustrated particularly in the theories of the monarchomachs, who attributed justice directly to the divine will intervening actively in political relations. The contract of submission (*pactum subjectionis*) of the people to the government, which the mediaeval theologians had already posited, is considered by the monarchomachs as sealed by God Himself. The violation of this contract by the monarch is therefore an offense against God, a revolt against divine justice, placing the monarch outside the law. Although the monarchomachs were not individualists, the connection of the idea of justice with the principle of the contract foreshadows the individualistic theories of justice of the seventeenth and eighteenth centuries.

The "natural law" school received its name primarily because it based all consideration of justice on the natural reason of man and opposed all consideration of the supernatural. Two currents in this stream of thought must be clearly distinguished: the individualistic current (the more influential) flowing through Hobbes, Pufendorf, Locke, Rousseau and Kant; and the social and universalist current most notably represented by Grotius, Leibniz, Wolff, Nettelbladt and the physiocrats. Although both are rationalist and secular, their conception of justice differs widely.

While the mechanistic and naturalistic individualism of Hobbes and Pufendorf leads to the identification of justice with the commanding will of the states, their followers Locke, Rousseau and Kant find the content of justice in the synthesis of liberty and equality. Positive laws and institutions that contradict these principles, such as the remnants of the feudal

regime, absolute monarchy and caste privileges, are considered unjust and hence illegal. Justice in society can be realized only by the deduction of all social order from a presumed contract of union (*pactum conjunctionis*) which guarantees the innate liberty and equality of men. Justice is not so much an objective order as a subjective consciousness, identical in all individuals; this is expressed particularly clearly by Rousseau. For him the idea of justice coincides with the principle of the "general will," which should not be confused with the popular will (or with the majority or the will of all) but represents "within each individual" the pure juridical consciousness "which reasons in the silence of the passions." When the individual finds that the laws and in general the commands of the public authorities contradict his consciousness of justice (his general will), the realization of which alone makes for liberty and equality, he is released from the obligation to obey. The idea of justice thus takes a distinctly revolutionary and even somewhat anarchic turn. It is true that all individuals are supposed to have an identical consciousness of justice (whence the term general will) and that the democratic and equalitarian regime is considered as a guaranty of the normal coincidence between the law and justice. Nevertheless, in case of conflict society as such may be dissolved by this recourse to the individual conscience, which is in the last analysis decisive. It is a theory of justice with almost illimitable depths of individualism and subjectivism.

In Kant the individualistic theory leads to a complete separation between justice and morality, a separation already suggested in Pufendorf. Since society, as contrasted with the individual consciousness, is stripped of all direct positive value and limited to the external relations of individuals, justice is confined to the regulation of external activity and to morality is delegated exclusively the concern with the inner life. Hence Kant's celebrated definition of justice, "Handle äusserlich so, dass der freie Gebrauch deiner Willkür mit der Freiheit von jedermann in einem allgemeinen Gesetz zusammen bestehen könne," or in sum—justice is the external liberty of each person, limited by the liberty of all others. The merit of this conception lies in its emphasis on the prime necessity for preserving the inner life of man, his religious beliefs and his opinions from all intervention by social authority. This it does by fixing clearly a line of demarcation

between morality and justice so that the latter may not serve as a pretext for such intervention. But there are palpable defects and dangers involved in this attempt completely to separate justice and morality. It regards justice as a purely external check imposed upon divergent wills; it makes for the avoidance of conflict but it does not organize any community of effort. And how can this external check be effected if not by a superior will which dominates other wills like a kind of mechanical force? It is highly significant that Kant in the applications of his theory of justice clearly approaches Hobbes; the individualistic theory of justice becomes necessarily statist.

Quite another direction was taken by the social wing of the natural law theorists. Grotius, Leibniz and their followers in elaborating a new concept of society as the cooperation of beings endowed with reason defined justice as *custodia societatis*—"Justum est quod societatem ratione utentium perfectit" (Leibniz). Justice puts an end to the conflict between the individual and the universal, the microcosm and the macrocosm, and brings about the synthesis between the whole and the parts. That is why justice is by its very essence a *justitia communis*, which reconciles in itself and transcends the commutative, distributive and universal principles. Rational and secular, justice is nevertheless not subjective; it imposes itself upon the consciousness as an objective equilibrium between the principles just mentioned and it is superior to every individual or collective will, which should rather be put at its service. The distinction between justice and morality should not, according to Leibniz and his followers, tend to separate the two domains completely. Justice is "charity in conformance with wisdom." It is moral charity intellectualized and logicalized. "*Justitia hominis affectum erga hominem ratione moderatur*"; it is intermediary between love and reason or logical calculation. This theory of justice, which certainly deserves to be characterized as social and which was adopted for their various uses by a series of nineteenth and twentieth century thinkers, makes of every community and group a medium for the realization of justice, according to no privilege whatever to the state. It is thus that Grotius, Leibniz and Wolff contributed particularly to the development of the idea of international justice which would achieve collaboration and peace in the supranational community.

The early socialist doctrines of the nineteenth century based their criticisms of economic inequality and disorder not on the idea of justice, which seemed to them a mirage produced by individualist preconceptions, but directly on the idea of love, of fraternity, of happiness, or of technology or prosperity. The same attitude of hostility to the prevailing ideas of justice and law may be observed in Auguste Comte on the one hand and in Karl Marx on the other. But the deepest basis of the socialist critique was the search for a more profound justice, not only formal but substantial, which would consider economic realities. The most extensive work ever devoted to the idea of justice, Proudhon's three-volume *De la justice dans la révolution et dans l'église*, proposes the socialization of the idea of justice itself and is thus linked through Fichte and Krause with the trend begun by Leibniz. It is by means of justice, according to Proudhon, that a conciliation is effected between the individual and the whole, which are equally real—a balancing of personal and transpersonal values, which are equally positive. Justice is at once objective and subjective, real and formal, or rather it transcends these opposites because it integrates individuals in a transpersonal, antihierarchical order, in which every individual maintains his own dignity precisely to the extent that he is an indispensable member of a community that cannot be reduced to the sum of its parts. Justice demands the realization of an order which is "neither communism, nor despotism, nor atomism, nor anarchy, but liberty in order and independence in unity." It is through "mutualism," the interplay of collaborative associations and their federations, through the humanization of property by its transformation into a social function in the hands of cooperative associations and, finally, through the counterbalancing of the state by organized economic society that justice can be best approximated. Such a justice is positive and dynamic; it secures with "certainty and fulness" everything which the older concept of justice merely permitted, and it takes account of industrial mobility and change.

Proudhon's conception of justice influenced equally the reformist socialism of Jaurès and the neoliberal doctrine of the French solidarists. It is true that in aiming to "bring back fraternity into justice" and to "render the social debt legal" the solidarists thought not so much of going beyond individualism and statism as of rectifying "the applications of com-

mutative justice," bridging the gap between the solidarity of men and the actual inequality in their conditions. To apply this conception of justice requires first of all a "reestablishment of equivalence . . . a realignment in the positions of the various members of society," which may be effected by the state through social legislation, the protection of women and children, the progressive taxation of income and similar measures. An analogous position with regard to social justice was occupied by English neoliberalism of the end of the nineteenth century in demanding the establishment of "equality of opportunity" and a minimum standard of living. Before the advent of neoliberalism the utilitarian theory of John Stuart Mill, which valued justice as "the most important and the most privileged of social utilities," adhered nevertheless to an intransigent individualism, identifying justice with the affirmation of the liberty of every individual and making it thus irreconcilable with anything but a formal egalitarianism. Herbert Spencer presents an interesting contrast to Mill. The latter starting with an individualist philosophy arrived at a social theory of justice. Spencer starting with the principle of "integration by differentiation," which seemed not only capable of reconciling naturalistic evolutionism with the ideal of justice but also of rendering the latter social, arrived in reality at a conception of justice "as individualist as that of Kant. His belief in the law of the "survival of the fittest" led him to fight any social policy which would aid those who were economically weak and dispossessed.

Juristic thought in the first decades of the twentieth century saw a revival of the idea of "natural law," movements for a "free" and a "living" law and the creation of new instruments of international law, especially the Permanent Court of International Justice. The movements in favor of a living law and the free inquiry of the judge must, however, be distinguished from the others. They revolve not so much around the question of justice proper as around that of equity, which consists in thoroughly appreciating the concrete case and in knowing how to individualize it—a process which Aristotle had already distinguished from justice.

The problem of justice arises only if the possibility is admitted of a conflict between equivalent moral values. Justice presupposes the existence of conflict: it is called upon to harmonize antinomies. In an order harmonized in

advance, in the community of the saints and angels, for example, justice is inapplicable and useless. But a simple conflict of forces is not sufficient: there must be a conflict between irreducible, positive and extratemporal values. Only the principle of the synthesis of individualism and universalism, which excludes any tendency to reduce the *a priori* values of the whole and of the individual the one to the other but which recognizes them as equivalent, can permit the problem of justice to be grasped in all its importance. It is only in the ideal realm of the moral that the synthesis of individualism and universalism premises a perfect harmony between personal and transpersonal values: in the actual world they are in fierce conflict. And it is precisely this gap between the harmony of the moral ideal and the disharmony of reality that gives rise to the problem of justice.

In the history of ideas justice and morality have been either identified, confused or too completely separated. Justice is an essential medium for the moral ideal, an *a priori* condition for its realization. It is its necessary *ambiance*; it shines with its reflected light; in its shelter alone the moral ideal may display its richly individualized and complex tissues. Inseparably bound up thus with the moral ideal, justice is nevertheless profoundly distinguished from it by its intrinsic structure, and it is precisely because of this difference in structure that it can play its role. Justice constitutes, as Fichte was the first to indicate clearly, a step in the rationalization of the moral ideal, which is in itself irrational (alogical). The moral ideal is accessible only through action, through a "volitive intuition," consisting in the participation on the transpersonal plane of pure creative activity, in which each must act in a manner absolutely dissimilar from that of all others, discovering by that very fact his place in the whole of creative activity. Justice cools the heat of the moral ideal by making it pass through a logical intermediary. It arrests the intuition-action and amalgamates it into a judgment. Justice is midway between morality and logic. The act to which justice presents itself is not the intuition-action itself but the "recognition" of its value. The recognition of a value is very different from the direct experiencing of it. One may, for example, be insufficiently endowed to grasp the aesthetic values of a symphony, but this does not at all prevent one from be-

coming indignant against whoever disturbs the quiet of the listeners. It is precisely to this act of the recognition of the moral ideal that justice applies itself, and the values which depend on it are consecutive to moral values. Through this act of recognition, strongly impregnated with intellectual elements and presenting the amalgam of a judgment and an action, the logicalization and the generalization of the irrational qualities of the moral ideal are achieved. In justice the general rule is substituted for the strictly individualized precepts of the moral ideal; common types are substituted for subjects not strictly comparable with each other; a certain schematic stability is substituted for creative movement; a quantitative element for the ensemble of pure qualities. It is precisely within the shelter of these boundaries of generality, of stability, of quantification, which are placed by justice at the service of the moral ideal, that the latter can display its creative force.

The relation between justice and the law is quite different from that between the moral ideal and empirical morality. It is much nearer to that between a logical category and the object constituted by that category. Justice plays the role of the Logos rather than of the ideal, of the law. The moral ideal is essentially opposed, inasmuch as it is unrealizable, to empirical morality and cannot be embodied in the latter; by its nature it can only exercise a "regulative" function with regard to the moral point of view. Justice, on the contrary, inasmuch as it is strongly impregnated with logical values, has the faculty of forming law directly: it does not oppose it so much as constitute it. Justice cannot serve as a basis of criticism and appreciation of the law because it is one of the elements of it.

It is but a consequence of the particularly complex position of justice as intermediary between the logical categories and the moral ideal that man has always attempted to do justice. Nevertheless, it would be false to identify justice with "natural law." This identification, which was diverted by only a few of the old theorists of the natural law, commits the triple error of placing justice on the same plane as the moral ideal, of pretending to deduce a body of law from this ideal and of identifying a juridical reality with the principle of its appreciation. If in general the existence of natural law could be admitted, it must in any case—as must also positive law—represent an

attempt to realize justice in a given social environment and must in consequence differ from justice itself. To deduce concrete law from justice is at bottom as great an impossibility as to deduce from a logical category the object which it constitutes; as sensation must intervene in the domain of perception, so in the domain of law there must intervene the resistance of the empirical social milieu.

Furthermore justice cannot serve as a criterion of appreciation and criticism of law for the reason that it is infinitely variable, the preliminary reconciliation between moral, personal and transpersonal values (which may themselves also be variable) being essentially mobile and changing according to place and time, while the moral ideal remains invariable in itself. It is not to the idea of justice but to morality that one must turn to discover the supreme criterion of a social and juridical policy. The true role of the idea of justice lies in its being the indispensable foundation of every scientific deduction of the general concept of law. In this sense the theory of justice is the essential prerequisite of a philosophy of law. From the character of justice as the logicalization of the moral ideal there results the fact that the law—the attempt to realize justice in a given social milieu—has a strictly determined and typical character; its requirements are limited and for that very reason the duties of some correspond to the claims of others. The structure of the law is thus multi-lateral and imperative-attributive, while the structure of morality is only imperative and unilateral, its requirements being infinite and strictly individualized. Thence follow the other differences between law and morality: the necessarily positive character of the rules of law, premising a guaranty of correspondence between the claims of some and the duties of others and thus making a purely autonomous law impossible; and also the presence in the law of the element of coercion, which is absolutely excluded from the moral domain.

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*See:* LAW; EQUITY; JURISPRUDENCE; MORALS; EQUALITY; NATURAL LAW; HUMANITARIANISM.

*Consult:* Gurvitch, Georges, *L'idée du droit social. Notion et système. Histoire doctrinale depuis le XVIII<sup>e</sup> siècle jusqu'à la fin du XIX<sup>e</sup> siècle* (Paris 1932), and *Le temps présent et l'idée du droit social* (Paris 1932); Pound, Roscoe, "The End of Law as Developed in Juristic Thought" in *Harvard Law Review*, vol. xxvii (1913-14) 605-28, vol. xxx (1916-17) 201-25, and *Law and Morals* (2nd ed. Chapel Hill, N. C. 1926);

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JUSTICE, ADMINISTRATION OF. The province of judicial administration is nothing less than the law in action. The law of the books presents a theoretical system of legal precepts, courts, judges and modes of procedure. The course of judicial administration presents phenomena which cannot always be reconciled with the law of the books. In an age of legislation it might be supposed that this tendency to divergence would be less marked than in the age of fiction and equity, but the human factors in administration are as powerfully operative as ever. In fact this is worth comment only because of the wide belief that a government should be one of "laws, not men." Indeed it is somewhat confusing to speak of the administration of "justice." Justice as the goal of law is a philosophical idea which is capable abstractly of various formulations. The administration of justice is at least theoretically supposed to proceed according to the precepts of positive law. Modern juristic practise is dominated by the conception of "justice according to law." It is the traditional ideal of all western democratic legal systems. The law has had a long and difficult struggle against personal and executive justice. But the modern revival of the demand for administrative justice shows that the struggle is still unabated. Of course popular notions of justice have always had important impacts upon the judicial process even where there has been no direct lay participation through such an institution as the jury. The belief that even

trained judges merely disclose the law has been exploded by sociological jurisprudence. It is indeed the growing realization of the true nature of the judicial process that has been primarily responsible for the focusing of attention upon the course of judicial administration. As long as mechanical jurisprudence reigned, jurists confined themselves to the study of legal rules and doctrines. Judges did not "administer," they simply "declared" the law. What was supposed to be automatic hardly needed to be administered.

The judicial machinery of different western democratic countries shows considerable variation in particulars, but the leading objectives of their systems of judicial administration may all be derived fundamentally from the straining for justice according to law. Despite all the attacks of the exponents of realism legal systems still cling to the ideal of certainty. Granted that the judge who is unhampered by fixed legal precepts will not be influenced by improper motives, it is still argued that both individual rights and the public security will be better secured by limiting his powers of free decision. In all the affairs of life there is a striving against uncertainty, but an individual who enters into a legal transaction wishes particularly to know his rights in advance. Especially a system of private property demands certainty as a guaranty of the security of titles. The ideal of certainty thus involves the paradox of suppressing as far as possible the administrative elements of judicial administration. In other words, judicial administration must be characterized by a greater inflexibility than other branches of public administration.

Nothing can so undermine the certainty of justice as a lack of impartiality. Thus the integrity of the administration of justice has been elevated as an ideal. Moreover the insistence has been upon a superior degree of integrity as compared with other branches of administration. Judicial administration has been surrounded with special safeguards. The modern state has striven to achieve a legal justice that should be far superior to its economic justice. In large measure it has succeeded. A judicial scandal is considered especially deplorable. The slightest hint of irregularity or impropriety in the courts is a cause for great anxiety and alarm. A legislator or an administrator may be found guilty of corruption without apparently endangering the foundations of the state but a judge must keep himself absolutely above suspicion. To

speak of "the integrity of the administration of justice" has become almost a fetish. It has perhaps a more intensive existence in common law than in civil law jurisdictions, where the judiciary, since it is not an independent power in the state but a branch of the administration, is less exalted, but it exists everywhere in western countries.

The insistence upon the superior integrity of judicial administration is closely associated with another idea: the sublimity of justice. The administration of justice is considered not only as a function of the state but as something of a mystery. This is apparent from many familiar practices and sentiments. At least high courts of justice are everywhere required to be architecturally magnificent. A trial, particularly a criminal trial, is as much a rite as a judicial inquiry. The proceedings are arranged to impress both the participants and the spectators with the solemnity of the occasion, with the majesty of the administration of justice. Not only the vulgar but the enlightened still respond to the ritual with some feeling of awe.

The reasons for these peculiar attitudes toward judicial administration hark back to an early period in the history of the state, which established the primary importance of rendering justice between man and man. There is a persisting memory of the anarchy of the period of self-help. The early sacral affiliations of the administration of justice are also not forgotten. When the king asserted his power over warring and intractable nobles, justice was established as the very foundations of kingdoms. The common man now had some measure of relief against the aggressions of the mighty. In his gratitude he invested justice with special attributes of sanctity. For many centuries the state remained almost solely the policing state, and the administration of justice was the only public function it undertook in the interest of the common man. Legal justice was synonymous with social justice, and it was natural enough that it should be appreciated very highly. Today the state undertakes many administrative services, and the contact of the average citizen with the state is far more frequent through its administrative than its judicial agencies. The average man may pass through life without coming into contact with the judicial machinery of the state. But it is still considered far less calamitous to have to pay a bribe for an occupational license than to be denied justice in the courts.

The state has gone a long way in preempting the field of judicial administration but it has not yet gone the whole way. In all western countries the sphere of judicial administration is still divided into two branches, the one civil and the other criminal. They have many points of contact, for the same injury may be the basis not only of civil relief but of criminal prosecution. Indeed in many continental countries by virtue of a so-called process of adhesion civil relief may be sought as part of a criminal prosecution. But the civil branch of judicial administration generally differs from the criminal in its problems and approach. The differences are formally expressed in the distinction that civil is "private" while criminal is "public" law. This is only to say that the interference of the state is not as direct and extensive in both branches. In the criminal law the interest of the state in the public security has practically eliminated all vestiges of the system of private composition. Both American states and continental countries have given to public prosecution at least a practical monopoly of criminal administration. The individual may complain but only the public prosecutor may actually initiate a prosecution. The important exception among western countries is England, where any private individual may begin a public prosecution, but even in England a director of public prosecution has been established to take action in the case of most major crimes.

In the administration of the civil law, where the stake is not the public security but individual interests, the state has traditionally maintained an attitude which has been described as one of benevolent neutrality. The state is there with its judicial machinery but it is for the private parties to invoke its aid. It will not ordinarily act upon its own motion. Even when a civil action has been commenced the parties retain control of its subsequent course. They may compromise or abandon it at any stage of the litigation. To a greater or lesser extent they have been permitted even to vary the steps of the legal procedure. To be sure, the state is now prepared to take direct measures of coercion against recalcitrant parties to a civil suit. It has gone beyond the indirect and elaborate process of outlawry which in primitive law in the absence of the idea of judgment by default was necessary to make a contumacious defendant answer. It no longer requires judgment "promise" before it will issue execution, although where contempt procedure alone is available the

situation is fundamentally not very different. But its general attitude toward civil suits shows plainly that it has never completely abandoned the ancient tradition of self-help.

The two great legal systems of the western world, the common law and the civil law, are formally organized upon different bases. Judicial administration has traditionally been said to be more highly centralized in civil than in common law countries. In continental countries the control of judicial administration has been vested in a ministry of justice which is charged with supervising the whole judicial machinery of the state. The minister of justice is a member of the cabinet and thus closely associated with the policies of the government. He is the liaison officer between the courts and the administration. The doctrine of the separation of powers has never in continental countries been pushed to the extent of making the judicial department a distinct department of government. It is simply a branch of the executive. The ministry of justice is thus not only a judicial but an executive department of government. Judicial administration thus retains something of a Byzantine cast in the countries which are the heirs of the Roman tradition.

The United States has usually been held up as an example of the opposite extreme. Here the English doctrine of the separation of powers has been adopted in such a constitutional form as actually to make the courts supreme rather than the law. The doctrine of the separation of powers has been interpreted in such a way as to make the judiciary an independent department of government which is supposed to be equal and coordinate with the other departments of government.

To be sure, American states now have an officer called the attorney general, but in reality he exercises little or no control over the judicial administration of the state. Theoretically he may have the power to intervene in criminal cases, but practically criminal prosecutions are so much in the hands of local district attorneys that he is quite helpless. Only in a few states, such as Iowa, Indiana, Nebraska and South Dakota, can the attorney general attempt to oust local prosecuting officials, but even there he can do so only through proceedings in the courts. Of course he cannot remove or transfer judges. The attorney general is simply the legal adviser of the governor and represents the state government when it is a party in civil cases. Moreover in such functions as he discharges he is as a

popularly elected official beyond the control of the state governor.

The organization of judicial administration in the federal government is somewhat more centralized than in the states. There has been a Department of Justice in the federal government since 1870. At its head is the attorney general of the United States. It actually controls the United States attorneys throughout the whole country who are charged with the administration of the criminal law. Its agents engage in criminal investigation. The work of criminal investigation and prosecution is thus coordinated. Over the judicial hierarchy of course the Department of Justice has no powers, and the attorney general unlike the continental minister of justice plays no part in securing legislation relating to judicial administration.

It is usual to say that in England there is no ministry of justice. It is fair to say, however, that it exists in all but name. As is so often the case in England the needed institution has been approximated without being formally created. The functions of a minister of justice are divided between the law officers of the crown, the director of public prosecutions, the home secretary and the lord chancellor. The two latter are particularly important as ministerial officers. The home secretary controls pardons, supervises the police system and the prison system, appoints all "stipendiary" magistrates and the local criminal judges called recorders and approves of circuit arrangements for the local judges. Even more important is the lord chancellor, who is a member of the cabinet and who since the Judicature Acts has been not so much a judge as an executive and legislative official. As a member of the cabinet he frames measures of a legal character; as an executive officer he appoints judges and supervises the entire court system; and as a judge he presides over the high courts.

As soon as one turns from the general objectives and organization of judicial administration to its results, the existence of a constant dissatisfaction is discovered. Complaints of the perversion of the administration of justice are practically as old as attempts to enforce legal rights. Since there has probably never been a truly static society, a complete complacency with any human institution is not to be expected. But complaints against the courts have been of particularly great volume and intensity. Any familiar book of quotations will more than prove the point. Legal reforms have been more or less



frequent but abuses have persisted. A tabulation of the very frequency of the reforms will show the constancy of the discontent. It is expressed in terms which are familiar enough.

One of them at least, "the law's delay," is classic. It has served to describe the almost immemorial condition of civil suits. The dockets, or calendars, of civil causes are always overcrowded, and it may take years to get a trial on the merits. The expense of commencing a civil action and the legal costs involved are too great, and it becomes hardly worth while to base an action on a small claim. The procedure is too elaborate and technicalities impede the litigant at every stage. Even after an initial judgment appeals may be a further cause of delay. Where the final judgment is secured, execution is more than likely to be returned unsatisfied. Under such circumstances the honest litigant is impeded in the assertion of his legal rights, while paradoxically enough the dishonest litigant is encouraged to assert unfounded or exaggerated claims. The very expense of engaging upon a protracted litigation will cause parties to settle for smaller sums.

Delay and technicality are operative not alone in civil actions. But other and more serious charges have been brought against the administration of criminal justice. In the pre-democratic era the arbitrary character of criminal justice led to accusations of excessive harshness, while at present the outcry is against an excessive tenderness toward malefactors. Many criminals are never even apprehended. Those who are have more than an even chance to escape by taking advantage of the loopholes of the law. The inherent drama of a criminal trial in the very nature of things always favors the defense. As a result of newspaper exploitation a criminal trial often becomes a public orgy. Except in matrimonial actions and libel cases a civil trial is usually free of such influences. On the other hand, corruption, favoritism and perjury are especially operative in criminal trials. Class and race bias make disinterestedness and objectivity difficult and cause miscarriages of justice. Every period has its own *cause célèbre*. It is a frequently heard commonplace that wealthy and powerful malefactors escape while the poor and friendless go to jail. Innocent men are sometimes "framed" by the police; and it is small comfort that the same technique is employed to get professional criminals behind the bars upon fabricated charges.

Popular dissatisfaction with the administra-

tion of justice has certainly not been less in the twentieth than in previous centuries. A period of particularly accelerated tempo, it would seem easy to explain the prevailing dissatisfaction in terms of institutional transitions. If, however, the phenomenon is constant it can hardly be explained entirely as the result of changing conditions. An explanation solely in terms of sociological differentials can be adequate only if more fundamental factors are absent. It is, for instance, tempting to assign the prevalence of perjury, which so often in modern courts undermines the administration of justice, entirely to the decline in influence of religious ideas. But perjury has always been a not infrequent crime. It should certainly be no less powerful a restraint to fear the punishments of this world than to fear the torments of the next. Authority has maintained itself somehow despite the decay of religious institutions. To take another stock illustration, the vast improvement in means of communication has undoubtedly given the criminal facile means to attempt escape but the advantage is balanced by the ease with which public authorities may pursue him. There is again the pernicious influence of the modern city. To it is attributed the congestion of the courts which is supposed to be the very basis of the modern maladministration of justice. But mere size can hardly account for the evils of metropolitan justice. As a matter of fact the city has been the originator of most of the improvements of procedure in the history of legal systems. If there are more litigants in the city, it has the necessary wealth to secure additional judges.

A great deal has been heard about the breakdown of justice in the United States. Many special causes have been assigned for the state of affairs. They have been repeated often enough to have become stereotyped. Both Puritanism and the pioneer tradition have been blamed for that intractableness of the American population which makes law enforcement difficult. The suspicion of the magistrate which is supposed to have characterized Puritanism is held to be responsible for multiplying the technicalities of procedure; although in the middle of the nineteenth century, when Puritanism was certainly far less remote than it is now, a puritanical American state legislature introduced a system of code pleading which if it had not been perverted by a process of judicial interpretation according to common law tradition would have gone far toward inaugurating a system of pro-

cedure much in advance of the times. Curiously the pioneer too is accused of favoring the proliferation of elaborate procedural devices because of his distrust of the courts. Yet the pioneer at the same time is supposed to have been an exponent of rough and ready justice. Certainly both Puritan and pioneer attitudes are hardly living forces in the American scene of the twentieth century. They were never more than extreme forms of individualism. At any rate the reforms of procedure in the last few decades have been so many that the worst features of the old system can hardly be said to survive. A disposition to be patient with technicalities is not a particularly distinguishing feature of American courts today. Appeals have been greatly curtailed; the sanctity of jury trial in civil cases has been undermined by such a device as the summary judgment; and all sorts of special civil and criminal courts have been erected to care for various special types of litigation, such as domestic relations, juvenile, small claims and municipal courts.

Nevertheless, it is continually asserted that the evils of American judicial administration are primarily due to the failure to "adapt" eighteenth century English institutions to American conditions. The vast superiority of English to American criminal administration makes the charge particularly plausible. Such an explanation is almost inevitable in any country which at one time was engaged in a process of reception of another legal system. Similar complaints of lack of adaptation have been heard in the countries which have received the Roman law. Undoubtedly in the initial stage of reception the receiving legal system is likely to lag behind its model. But for that very reason it is likely in succeeding stages to be even more independent. Generally speaking, legal reception involves much the same problem as cultural diffusion. The institutions of the receiving legal system are apt to be native inventions with foreign externals, often only half understood. As good an example as any is the way the English "rule of law" became American constitutionalism. As a matter of fact American law was making striking departures from English models throughout its history, as the many technical differences between the English and American common law systems show. Even the official dogma was that English law was to be received only in so far as it was suitable to American conditions. Thus in such a matter as debt American law from a very early period

favored the creditor class to a far lesser degree than English law. In the organization of American courts the peculiar English structure of conflicting and overlapping jurisdictions, the result of a great variety of historical accidents, was to a large extent avoided, and it may be said indeed that the more logical American hierarchy of courts showed French influence more plainly than English. Particularly in the criminal law did American legal institutions depart radically from the English models. American law followed European at a much earlier date than English law in introducing the public prosecutor. Until the establishment of the office of director of public prosecution in England in the last quarter of the nineteenth century England still maintained the mediæval theory of private prosecution. In any event the insistence upon "failure of adaptation" wrongly assumes that the English institutions of the eighteenth century were adapted to the conditions of the motherland at the time.

The conventional division of western law into "common" and "civil" law systems has also encouraged ready explanations of the comparative quality of their results in terms not only of sociological but of technical differences. These certainly were fairly marked in the earlier centuries of their history. But the political centralization which is necessary to the establishment of efficient national legal systems, and which was early achieved in England, has also been accomplished in continental countries. The English constitutional struggles of the sixteenth and seventeenth centuries have had their later counterparts in the democratization of other western countries. The rule of law is not now the exclusive glory of the common law. The establishment of administrative courts in continental countries has brought at least as great a degree of protection of individual rights against the arbitrary encroachments of government as it is possible now to achieve in England by virtue of the immemorial prerogative writs. Without doubt American constitutionalism goes further in favor of individualism, but the doctrine of judicial review is not now an exclusively common law institution, since the right to review legislative acts has also been established in some European countries although it may constitute a less rigid form of control there because of the existence of other factors, such as the greater ease of reversing an unpopular constitutional decision by constitutional amendment and the lesser exaltation of the

position of the judiciary. It must be remembered that in all modern countries the judiciary exercises an undue power in the state by virtue of ordinary powers of judicial interpretation. While the technology of the private law in common and civil law jurisdictions differs considerably, in all western countries they have the same purpose of protecting the institutions of property and contract. Nevertheless, even technologically there are many similarities. The common law can boast the doctrine of consideration but in the civil law may be found the analogue of *causa*.

The substantive law of crimes and punishments in all western countries has a remarkable degree of similarity. As far as criminal procedure is concerned a great deal is still made of the difference between the continental "inquisitorial" as opposed to the Anglo-American "accusatorial" system. Even in the heyday of the classic common law the distinction was not completely justified. The English justice of the peace for some centuries exercised inquisitorial as well as judicial powers. The English court of Star Chamber was hardly an accusatorial institution. Down at least until the Restoration the English practise of an unrestrained and running fire of cross examination by the judges was hardly better than the continental practise of systematic interrogation. Any intimate acquaintance with modern continental criminal procedure will show that there is no longer any basis for the old scholastic distinction. Everywhere the rights of confrontation and publicity are recognized. Private prosecution was a feature of the accusatorial system, but all western countries provide for the institution of the public prosecutor in one form or another. The introduction of the jury into continental countries in the nineteenth century for the trial of major crimes greatly modified the inquisitorial system. It is true that the jury is now on the decline in some continental countries but so it is also in both England and the United States, in the former country as the result of the development of "summary" prosecution, in the latter as the result of the district attorneys' legal or administrative powers of bargaining. As a matter of history the praise of the jury system usually overlooked the devices developed by the judges for its control and above all the effect of its middle class constitution. Besides in the United States the use of the injunction in essentially criminal cases may be cited as a notable example of a funda-

mentally inquisitorial procedure. To this may be added the practise of the "third degree" by the police. As in the Middle Ages the strictness of the rules of proof has led inevitably to the use of torture. Again, it is frequently said that the "local" basis of prosecution in common law jurisdictions, which in its prime made it impossible to prosecute a criminal for a transitory crime, makes it easy for a criminal to escape by crossing territorial lines. In England, however, the local basis of prosecution has been all but eliminated by twentieth century legislation and it has been to a large extent curtailed in the United States by the reception of early English statutes. Everywhere the institutions of extradition and interstate rendition have gone far toward making criminal pursuit international.

The examples may be multiplied almost indefinitely. Each system has its technical virtues and defects but it seems very probable that a rough balance is produced in the general result. It is particularly difficult to understand foreign legal doctrines. But since the course of the administration in foreign countries is even more difficult to follow than the law of the books, it is easy to romanticize the operation of a foreign system. Indeed its defects often recommend themselves to the native observer as positive virtues to be emulated. If cultural values and institutional fundamentals are assumed to be very similar in most western countries, it becomes hard to believe that the effects of variations of juristic technique will not largely be minimized in the actual course of administration.

A universal rather than a particularistic mode of approach explains a great many of the defects of judicial administration. Litigiousness is a strong characteristic of human nature. All over the world a forensic display attracts the admiration of the multitudes. Curiously legal technicalities are despised at the same time that their ingenuity is applauded. Disappointed litigants are not always silent. In their defeat they appeal from "law" to "justice." Lawyers as a class have too much to gain from maintaining the intricacies of their art to simplify it to the extent which would make their services unnecessary. For many reasons legal institutions lag behind changes of public opinion much more than do other institutions.

It seems almost as if the great western tradition of justice according to law has almost inherent and fateful difficulties. The great con-

cern for the security of individual property demands a considerable formalism in civil procedure. The tendency is for it to run rather to excess. It is true that a civil suit of major consequence in the present century may be completed in a year or two or even less, whereas a few centuries ago it might have taken a decade or two or even more. But before it is concluded that a great improvement has taken place the differences of pace of the respective periods must be taken into account. Again justice according to law tends to strain toward equality. The procedure of the law is devised to deal with all claims upon the same basis. But that basis is the degree of protection necessary for interests of substantial magnitude. To be sure, as the pressure for real equality has made itself felt special procedures or courts have been invented to secure the enforcement of minor claims in a more or less summary fashion. But often the procedure is still too formidable for the size of the economic stake involved. Again, justice according to law demands that the justice of the state be exclusive. The pluralistic competing associations are suppressed with the result that controversies which might have been adjusted quite readily in the intimacy of the group are handled by the state with elaborate delay. The state, which is a stranger to the group, can necessarily proceed only with great caution. It may accept the rules of the group but its procedure will always be its own. A ready example is the perversion of the law merchant in all mature legal systems. Finally, justice according to law demands that legal rules be applied as mechanically as possible. Discretion is considered dangerous. A rule is sometimes selected not because it is the best but because it is easiest to apply. A judgment is often given not because it works justice in the particular case but because it is considered unwise to relax a general rule.

It would be easy enough to overcome the almost inevitable inefficiency of justice according to law. But far reaching changes are certainly impossible while the regime of individualism upon which the prevailing ideal is based is considered desirable. As long as the interest in individual security is preferred to the interest in the general security both civil and criminal justice must remain "inefficient" to a large extent. Those who speak of judicial inefficiency are usually unaware of the highly artificial meaning of the conception. The law is efficient in civil suits when it enters judg-

ment and issues execution as expeditiously as possible. Thereafter its efficiency ceases to be the primary consideration. As a result of the humanitarianism which is the necessary corollary of the regnant individualism a whole series of obstacles arises in the enforcement of execution. The property of the debtor is often put beyond the reach of the creditor either by the procedural delays which make it possible for the debtor to transfer it or by formal exemptions from execution. The person of the debtor is of course beyond seizure. In this respect the law of previous centuries, which more frequently recognized rights of provisional arrest and imprisonment for debt, was certainly more "efficient." But a return to the older law will hardly recommend itself now. In any event there would still remain the economic poverty of the debtor to defeat the efficiency of the law, and it is safe to venture that the latter would be blamed exclusively for every miscarriage of justice. In the criminal law the situation is somewhat reversed. Once judgment against a malefactor is obtained it is much more certain to be executed. But the concern for the individual is manifest in the procedure to judgment. The provisions are not only considered procedural safeguards but are great constitutional rights. They are indeed constitutional rights which have been won only after many centuries of bloodshed and in no western democracy would their abandonment be seriously considered. The almost insoluble dilemma is that they benefit not only the ordinary citizen who occasionally finds himself in the toils of the law but the professional criminal, who by long experience has learned to take advantage of all its defenses.

Although the law has constantly oscillated between concern for the individual and for the general security, the perfect balance has probably never been struck. As one extreme is reached there is a reaction toward the opposite extreme. At present after a century of individualism there is an insistent demand for socialization. In the criminal law it has shown itself in a rather vague demand for a "preventive" criminal justice. In the private law it has led to proposals to make the state assume through some public officer the direct burden of administering civil justice. Less radical proposals look merely toward the establishment of state legal aid bureaus. Here and there within recent decades the conception has begun to penetrate that even civil procedure should be regarded as

public or beyond the control of private parties. But on the whole the movement for "socialization" can hardly have very much success as long as the more fundamental social institutions remain largely unaffected. It is difficult to see the possibility of introducing a monopoly of civil justice as long as private rights are recognized. Most of those who favor such a scheme hardly realize its extreme economic radicalism.

To be sure, individualism is not to the same extent the basis of the social order in all western democracies. Many compromises have been made here and there which have had beneficial effects upon the quality of judicial administration. Special conditions have sometimes accounted for peculiar results. In imperial Germany the pride of a judicial oligarchy was the cause of a period of storm and stress which inaugurated the so-called free law movement. In post-war Germany the country seethed with political murder. South American countries are usually democracies only in name, and dictatorship has far reaching effects upon the administration of justice. The considerable variation in the political systems of different countries has had a particularly marked impact upon their criminal justice. The political institutions of a country constitute its fundamental technique of human relations, of which the criminal law is only a part. It is to the corruption of the American political system rather than to either Puritanism or the pioneer tradition that the reputed inferiority of American criminal justice is to be traced.

Since it is difficult to secure radical alteration of fundamental social institutions, the reform of judicial administration usually concerns itself with adjustments of the judicial machinery. Reforms of procedure are far more frequent than changes of substantive law. Perhaps that is one of the reasons why the results frequently leave so much to be desired. It is true that the distinction between substantive law and procedure is artificial. All reforms of procedure effect substantive rights but certainly they cannot improve the situation where the substantive right is of a dubious character. In general the creation of new courts or the appointment of additional judges to existing courts is a very frequent expedient in reform. Its popularity with politicians arises from the fact that it increases their patronage by providing new offices to fill. Changes in steps in procedure often have the curious result of increasing the congestion of the courts for at least a time. A great deal of

litigation is often necessary to settle their effect. The fundamental puzzle of procedural reform is the indispensability of any one particular device. Since legal technique permits of a considerable degree of variance for the accomplishment of similar ends, it can be said that almost any form of procedure reasonably adapted to secure the fundamental purposes of the law will work if there is the will to make it work.

Of particular reforms of procedure it is impossible here to speak. But as far as the general organization of judicial administration is concerned there has been a great deal of agitation in recent years in both England and the United States for the establishment of ministries of justice upon the continental model. It is very much to be doubted, however, that they would inaugurate a profound change in the direction of judicial administration. Since in England the functions that could be discharged by a ministry of justice are already discharged by several existing officials, the movement for it is intelligible only as one for consolidation of their powers. In the United States a good deal of supervision of judicial administration takes place through such semi-official organizations as the bar associations, which are consulted in the appointment of judges, which draft legislation relating to judicial administration and which in general exercise a good deal of supervision over lawyers, judges and courts. Complaints of the maladministration of justice have been so frequent in the United States that they can hardly be said to be secrets which need to be revealed to the ignorant legislatures by ministers of justice. As for the control of the courts themselves, the great independence of the American judiciary really makes it impossible. Even the shifting of judges from one district to another as they are needed can take place only within limits. Moreover in the prevailing enthusiasm it is overlooked that the supervisory powers of even the continental ministry of justice have been undermined in recent decades by the introduction of guaranties of judicial independence. Thus a centralizing agency is urged that has been decentralized to a considerable extent in the countries of its origin. Moreover there can never be a real organic unity of organization in the administration of justice as long as there survives a disunity of procedure in civil and criminal matters. Even where the ministry of justice exists civil justice does not receive the same degree of oversight as criminal justice. It is forgotten too that at

least as far as civil procedure is concerned the courts in a considerable number of American states no longer need an agency to secure relief for them from the legislatures. In the last two decades a movement to follow English practise in giving rule making powers to the courts to enable them to control procedure has secured legislative approval in Alabama, Colorado, Delaware, Michigan, New Jersey, North Dakota, Vermont, Virginia, Washington and Wisconsin. Curiously the courts in almost all of these states have made little use of their rule making powers.

While no American jurisdiction has established a ministry of justice, a great many have established bodies known as "judicial councils" in imitation of the judicial council provided for in England upon the consolidation of the courts under the Judicature Acts. Judicial councils exist at present in California, Connecticut, Idaho, Illinois, Kansas, Kentucky, Maryland, Massachusetts, Michigan, New Jersey, North Carolina, North Dakota, Ohio, Oregon, Rhode Island, Texas, Utah, Virginia, Washington, Wisconsin. These councils have in general been made not directive but investigative agencies, and there is little evidence that they are much more than paper institutions. At the most they have produced only a few reports. In England the inactivity of the judicial council of the Supreme Court has been the subject of comment. A federal council, or conference, of senior circuit judges established in 1922 has been more successful. It meets annually to consider the problems of judicial administration in the federal courts. Unlike the state judicial councils it has the important power of transferring judges to various districts where they are needed because of the pressure of judicial business. The right to transfer judges also exists in other American courts, such as unified municipal courts.

The agitation for American ministries of justice is closely connected with plans for laying the foundations of an adequate science of judicial statistics. At present judicial statistics are almost entirely criminal statistics. In continental countries the ministry of justice and in England the office of the lord chancellor publish civil statistics, but generally speaking they relate only to the volume of judicial business and the pace of procedure. As far as the subjects of litigation are concerned only such matters as divorce and bankruptcy are reported with any degree of adequacy. Divorce and bank-

ruptcy statistics are often available also in the United States, where they are reported either by governmental departments or voluntary associations, but for the rest not even the European standard has been maintained. Until very recently there were few statistical reports relating to the civil business of the courts, and no more than a beginning is represented by the civil statistical surveys in Ohio, New York and Maryland which are now being encouraged by the Institute for the Study of the Law at Johns Hopkins University. A few of the reports of the state judicial councils have also been of some value.

Civil judicial statistics, if their compilation can be kept dissociated from particular programs of reform, are bound to prove interesting if not helpful, but certainly too much is not to be expected in the way of palpable results, at least not as far as the immediate future is concerned. Civil statistics are bound to be far less reliable than criminal statistics have proved. It must be remembered again that in civil matters the state does not press to discover when a wrong has been committed. In the attempt to use civil judicial statistics to follow social trends many complicated factors must necessarily be encountered. An increase of complaints may be traced back to an increase in legal transactions rather than to more frequent attempts to escape payment. Again, an increase of complaints may be due not only to economic depression but to a boom psychology which has led debtors to overreach themselves in taking advantage of easy credit. Such factors must be considered even in using civil statistics for the simple purpose of regulating the business of the courts. Despite the availability of statistics it must still remain very difficult to evaluate the effect of a particular procedural reform.

The ultimate test of a system of judicial administration is the extent of the civil controversies and the public crimes which it prevents by its mere existence. On the other hand, it must be remembered that men discharge their civil obligations and abstain from crime not only from fear of legal sanctions but also from moral and practical considerations. The modern tendency is certainly to stress other forms of social control. Finally, it must be realized that even the defects of the administration of justice, at least in civil matters, may have some social value in discouraging litigation, in impelling men to exhaust the possibilities of conciliation.

In an acquisitive society it is perhaps desirable that the paths of litigation be strewn with a few thorns.

WILLIAM SEAGLE

See: JUSTICE; LAW; EQUITY; PROSECUTION; PROCEDURE, LEGAL; COURTS; JUDICIARY; JUDICIAL PROCESS; JURY; JUDGMENTS; LEGAL AID.

*Consult:* A bibliography of judicial administration would repeat for the most part the references under various legal topics. The reader should consult especially the bibliographies of such central articles as JUSTICE; LAW; COURTS; JUDICIARY; PUBLIC PROSECUTION; PROCEDURE, LEGAL. The references under JURISPRUDENCE will show the juristic forms of approach toward the general problems of judicial administration. The works of the sociological school will be found to be particularly preoccupied with the law from the point of view of administration. For the quality of judicial administration in any particular country, its standard legal histories should be consulted. Occasionally there are very illuminating works dealing with a particular period. Thus the works of Ernst Fuchs give an intimate picture of justice in imperial Germany. J. W. Hedemann's *Reichsgericht und Wirtschaftsrecht*, Jena, Universität, Institut für Wirtschaftsrecht, Schriften, vol. 8 (Jena 1929) is especially valuable in showing the manner in which the highest court in Germany adjusted legal rights and interests in the post-war inflationary period. In the United States the most prolific writer upon judicial administration has been Dean Roscoe Pound. He recognizes the difficulties which are inherent in justice according to law but on the whole represents the point of view that the maladministration of justice in the United States is due to the failure properly to adapt early English legal institutions to twentieth century American conditions. See some of Pound's articles: "The Causes of Popular Dissatisfaction with the Administration of Justice" in *American Law Review*, vol. xl (1906) 729-49, "The Administration of Justice in the Modern City" in *Harvard Law Review*, vol. xxvi (1912-13) 302-28, and "Justice According to Law" in *Columbia Law Review*, vol. xiii (1913) 696-713, and vol. xiv (1914) 1-26, and 103-21; also his books: *The Spirit of the Common Law* (Boston 1921) and *Criminal Justice in America* (New York 1930). In connection with the movement to establish ministries of justice in the United States see: Cardozo, B. N., "A Ministry of Justice" in *Harvard Law Review*, vol. xxxv (1921-22) 113-26; Glueck, S., "Ministry of Justice and the Problem of Crime" in *American Review*, vol. iv (1926) 139-56; Edwards, J. Glenn, "The Ministry of Justice in France," and Jenkins, W. S., "A Ministry of Justice in England" in *North Carolina Law Review*, vol. viii (1930) 328-40. For the status of judicial statistics in continental countries see: Hesse, A., "Justizstatistik" in *Handwörterbuch der Staatswissenschaften*, vol. v (4th ed. Jena 1923) p. 537-42. For American judicial statistics: Marshall, L. C., "The Beginnings of Judicial Statistics" in American Statistical Association, Committee on Social Statistics, *Statistics in Social Studies*, ed. by S. A. Rice (Philadelphia 1930) ch. vii. A bibliography of the literature on the judicial councils movement in the United States and the rule mak-

ing powers of American courts is found in Willoughby, W. F., *Principles of Judicial Administration* (Washington 1929) p. 607-52.

**JUSTICE OF THE PEACE.** The office of justice of the peace represents one of the oldest and most celebrated of English institutions. By virtue of this office the process of governmental centralization was finally completed in England. The last of the remaining old local courts or officials—the hundred, the toun and particularly the sheriff, who was virtually the ruler of his county—were gradually displaced. But the new justice of the peace was no paid royal emissary. Although appointed by the king and subject to the control of the king's council or courts he was a member of the local landed gentry, whose services very soon came to be entirely honorary. Thus a balance was struck between the necessities of centralization and local self-government, and it was precisely this balance which gave the office of justice of the peace its strength and importance. The office brought English noblemen and gentlemen into contact with the common people of the realm. They became trained in the affairs of government and in the administration of justice. This training produced great efficiency in many justices who later became members of Parliament and had no little effect in determining the final supremacy of the lawmaking body of England. In the seventeenth century Coke declared that the office of the justice of the peace was "such a form of subordinate government for the tranquility and quiet of the realm, as no part of the Christian world hath the like, if the same be duly executed" (*Fourth Institute*, ch. xxxi, p. 170).

Perhaps the forerunner of the justice of the peace may be detected as early as 1195, when the justiciar, the principal minister of state and direct representative of the king, issued a proclamation to the effect that certain knights nominated for the purpose were to take an oath from all aged fifteen years and upward to aid in the preservation of the peace. In any event the justice of the peace can be readily traced from the reign of King Edward III. By statute in the year 1327 this monarch attempted to make his position secure by assigning certain well qualified men in each county of the realm to act as conservators of the peace.

The institution of justice of the peace may be said to date from the year 1360, when the statute 34 Edw. III, c. 1, appointed "one lord, and with him three or four of the most worthy in the county, with some learned in the law" to keep

the peace and try felonies and trespasses at the king's suit. But this authority obtained only when two or more of these officials acted together. From now on they became known as justices and very soon thereafter reference was made to them as "justices of the peace" in the statute 36 Edw. III, c. 12 (1362).

From time to time the powers and duties of the justices of the peace were enlarged, until they became the most important factors in administering local governmental affairs in England. In truth for some three centuries they were the virtual rulers of the county, exercising not only the functions of the sheriff of an earlier day but participating in almost all the multifarious functions of the developing English state, including police, administrative and judicial functions. The last were primarily of a criminal character, for the civil jurisdiction of the justices has always been extremely limited.

After the middle of the nineteenth century many fundamental changes began to be made in the office of the justice of the peace. When a general county constabulary was established in 1856 (19 & 20 Vict., c. 69), the justices abandoned the role of police officials. A series of acts after the early decades of the century had already deprived them of some important administrative functions, and they lost most of the remaining ones when the County Councils were established in 1888 (51 & 52 Vict., c. 41, §§ 1-30) and the Parish and District Councils in 1894 (56 & 57 Vict., c. 73). Moreover the office of a justice is not now always honorary. Legislation has also made it possible for municipal boroughs and urban districts to secure the appointment of paid professional magistrates by petitioning the home secretary. These are the so-called stipendiary magistrates. The metropolitan police magistrates of Greater London are all stipendiaries. Finally in 1906 came the abolition of the property qualifications for justices of the peace (6 Edw. VII, c. 16), which had been £20 a year from 1439 (18 Henry VI, c. 11) to 1732 and £100 a year thereafter (5 Geo. II, c. 18).

The courts held by justices of the peace are still called Quarter Sessions and Petty Sessions. The Quarter Sessions are the sittings of the justices which take place quarterly, although adjourned sessions may often be held at other times. The sessions for divisions of the county are the Petty Sessions. Two or more justices are required to constitute a court unless the magistrate is a stipendiary. The court of Quarter Sessions has very broad powers: it not only tries

persons who have been indicted but makes presentments, and it exercises both original and appellate jurisdiction in civil as well as criminal cases. Originally the Quarter Sessions had jurisdiction to try nearly all criminal cases except those involving treason. But custom and statutes have removed from their jurisdiction cases involving murder and felonies punishable by life imprisonment and certain other specified offenses which usually involve difficult questions of law, although they still try cases of burglary. In the Petty Sessions the justices have summary jurisdiction over a great variety of criminal offenses of a petty nature.

Justices of the peace still act as committing magistrates. The preliminary examinations now held by them have their origin in statutes enacted in the reign of William and Mary. In the beginning the examinations were inquisitorial in nature but ceased to be so in 1848 (11 & 12 Vict., c. 42-43). The Criminal Justice Act of 1925 (15 & 16 Geo. V, c. 86, § 31) extended the powers of justices of the peace in the issue of process. Their process now runs to any county in England or Wales either to effectuate arrest or to compel appearance.

Thus the justices of the peace have become agents for the enforcement primarily of the criminal law. The lay justices had given way as they proved unequal to the task of ministering to all the complex needs of the modern state. The outcome has been much the same in the United States, where the office of the justice of the peace was one of the first instrumentalities of government which was created by the American colonists.

It was provided for by statute in Massachusetts as early as 1630, and the institution was flourishing in most of the colonies before the revolution. The principal function of the early justice was to maintain order. This was done by the exercise of criminal jurisdiction, which in some colonies was limited to specific offenses and in others was expressly made coextensive with the jurisdiction of the English justice of the peace.

The American justice of the peace has generally exercised a more extensive civil jurisdiction than the English justice. Before 1700 the colonial justice began to exercise jurisdiction in civil causes. In 1692 Massachusetts Bay Colony authorized the justice to hear, try and adjudge all manner of debts, trespasses and other matters involving in controversy a value not exceeding forty shillings. In Virginia his civil jurisdiction extended to con-



trousers involving "one hoghead of tobacco not exceeding 350 pounds." In addition to his duties concerning criminal and civil matters the colonial justice also performed numerous administrative functions. Among these were the taking of acknowledgments, the performance of marriage ceremonies and the taking of depositions.

The colonial justice of the peace was an officer of considerable standing. Within the scope of his territorial jurisdiction he seems to have been the *ne plus ultra* of local authority. The execution of the powers given him influenced not only the political, social and economic life of the community but the private lives of the individual citizens. That he was recognized as an important local official and occupied a high place in the minds of the people of colonial America is evidenced by the fact that the office by either statutory or constitutional provision has become a part of the judicial system of every state of the union.

But the justice of the peace of today is not the justice of colonial days, although in many state statutes he is still designated "conservator of the peace." Much of the criminal jurisdiction which he exercised has been withdrawn. He may try only certain misdemeanor cases, punishment for which is specifically limited in both the amount of fine and the term of imprisonment. The justice of the peace is more important, however, in his capacity as a committing magistrate. In this capacity he has authority to issue warrants for the apprehension and arrest of persons charged with the commission of public offenses, both felonies and misdemeanors. As magistrate he may hold preliminary hearings, reduce testimony to writing, discharge the accused or remand him to jail and fix bail. His administrative duties have not materially changed. In his civil jurisdiction he is limited by the amount of money claimed or the monetary value of the thing in controversy. In most states this amount varies from one hundred to three hundred dollars. Within that monetary limitation the variety of cases which the justice may hear and determine is very large.

The justice of the peace today is almost invariably an elective officer. His term of office varies from one to seven years. The usual term is two years. His compensation generally consists of fees paid by the party losing in the litigation. The statutes, beyond requiring the candidate for justice of the peace to be a resident, elector, voter or citizen, are silent on the subject of qualifica-

tions. The result is that the justice is usually a layman.

In the early days of the republic and during the settlement and carving out of new states on the western frontier the population was sparse and the power of government was decentralized. There were then few laws and fewer lawyers. In such pioneer communities protection and stability depended upon the quality of the man who administered the rules of society rather than upon the rules themselves. The justice was usually a man in whom the community had confidence. He was well known and was chosen because of his native ability, sound judgment and integrity. "Rough and ready" justice was necessary, and it was meted out fearlessly. Cases were few, and the trying of them was but an incident to the justice's principal business of making a livelihood. In that atmosphere the office of justice of the peace was a strong social institution.

Today, however, the American population, instead of living in backwoods agricultural communities enjoying a simple social life in which contacts are few, is concentrated in great industrial cities in which social life is most complex and contacts are many. The agencies of government and social control are centralized. The law rather than the individual who administers it is in the ascendancy. These conditions have filled the statute books with multitudinous laws, some simple and many very complicated. These the justice of the peace must interpret and administer. In a city of any consequence moreover the candidate for justice of the peace is little known by more than a few of the voters who elect him, and instead of electing an officer to try a case involving an occasional dispute between neighbors the electors are choosing a full time official of an inferior court.

The changes in the American social and political structure have thus made the office of justice of the peace rather anachronistic. In recent legislative enactments there is a tendency to improve the justice of the peace courts in some quarters and to abolish them in urban districts and great metropolitan centers. Where retained the justices are no longer maintained by fees paid by the litigants but receive a regular and substantial salary paid out of the public treasury. They are legally trained and in many instances are required to have devoted a definite number of years to the practise of the law before becoming candidates. Where these innovations are taking place, however, the new tribunals have

characteristics which really differentiate them from the old courts of the justices of the peace.

CHESTER H. SMITH

See: COURTS, JUDICIARY, JUSTICE, ADMINISTRATION OF; POLICE, COUNTY COUNCILS.

Consult: Maitland, F. W., *Justice and Police* (London 1885) chs. viii and ix; Beard, Charles A., *The Office of Justice of the Peace in England in Its Origin and Development* (New York 1904); Putnam, B. H., *Early Treatises on the Practice of the Justices of the Peace in the Fifteenth and Sixteenth Centuries* (Oxford 1924); Holdsworth, W. S., *A History of English Law*, 9 vols. (3rd ed. London 1922-26) vol. i, p. 285-98, vol. iv, p. 134-51; Howard, P., *Criminal Justice in England* (New York 1931) ch. v; Smith, Chester H., "The Justice of the Peace System in the United States" in *California Law Review*, vol. xv (1926-27) 118-41.

JUSTINIAN I (c. 482-565), Byzantine emperor. Justinian was born in Macedonia of an obscure family of Illyrian peasants. Under the protection of his uncle Justin he received his education at Constantinople, where he became saturated with the culture and traditions of Rome and of Christianity. In 518 Justin, who had risen to be commander in chief of the imperial guard, was able to assume the throne. As his counselor his nephew directed the policies of the government and in 527 became emperor in his own name. Justinian had one absorbing ambition from the moment of his enthronement—to restore the vanished Roman Empire to its ancient limits and glory by destroying the barbarian kingdoms which had been erected on its ruins. As soon as internal peace had been attained by the suppression of the Nika sedition in 532 he undertook the task of reconquering the west. In 533-34 his general Belisarius recaptured Africa from the Vandals; a prolonged war (536-52) resulted in the defeat of the Ostrogoths in Italy; in 554 part of Spain was wrested from the Visigoths. About the Mediterranean, once more a Roman lake, there thus emerged an empire of incomparable prestige, defended by immense fortifications on all its frontiers and headed by a skilful diplomat. Seeking to follow the tradition of the great Roman sovereigns in his internal policy also, Justinian ordained the restatement of the Roman law which is embodied in the *Corpus juris civilis* (q.v.), made extensive administrative reforms and enhanced the splendor of his office by the building of public works and the establishment of a luxurious court. His eternal glory is assured by two monuments, the Justinian Code and the basilica of St. Sophia.

Justinian's achievements were bought at heavy

cost. In his anxiety to undertake the western campaign he had made a hasty peace with Persia in 532, and between 540 and 555 Persia was able to win a disastrous victory over the empire in Asia; Huns and Slavs found opportunity to make inroads in the Balkan Peninsula. His gigantic foreign and domestic enterprises entailed expenditures necessitating oppressive taxation and leading finally to financial ruin. The legacy of the aged Justinian to his successors was a disrupted empire, an army near to annihilation and the difficulties of liquidation.

The end of the reign also demonstrated the transiency of his religious policy. Justinian had early realized that in order to secure his predominance in the west he must effect a reunion between the Eastern and Western churches, root out the Monophysite and Nestorian heresies and establish the orthodox religion of the papacy. Under the influence of his wife, Theodora, a friend of the Monophysites, he attempted to carry out this policy by finding a basis for compromise with that sect. All his theological ardor and all the authoritarian brutality of his "Caesaropapism" were employed to this end. But the death of Theodora in 548 deprived him of a collaborator of remarkable intelligence and political wisdom. In spite of the apparent success of the Fifth Oecumenical Council in 553 he failed completely to reestablish religious unity. The miserable close of his reign does not, however, affect his position in history as an eminent representative of two great ideas, imperialism and Christianity. Justinian the Great—posterity in Byzantium did not begrudge him the title—was indeed the last of the great Roman emperors.

CHARLES DIEHL

Consult: Diehl, C., *Justinien et la civilisation byzantine au VI<sup>e</sup> siècle* (Paris 1901), and *Histoire de l'empire byzantin* (Paris 1919), tr. by G. B. Ives (Princeton 1925) ch. 11; Vasiliev, A. A., *History of the Byzantine Empire*, University of Wisconsin, Studies in the Social Sciences and History, nos. xiii-xiv, 2 vols. (Madison 1928-29) vol. i, ch. 11; Bury, J. B., *History of the Later Roman Empire from the Death of Theodosius I to the Death of Justinian*, 2 vols. (London 1923), Pfannmüller, Gustav, *Die kirchliche Gesetzgebung Justinians* (Berlin 1902); Holmes, W. G., *The Age of Justinian and Theodora*, 2 vols. (2nd ed. London 1912); Pullan, Leighton, *From Justinian to Luther, A.D. 518-1517* (Oxford 1930).

JUSTO, JUAN BAUTISTA (1865-1928), Argentinean statesman and sociologist. Justo studied surgery in Argentina and Europe and was a practising physician, abandoning his profes-

sion upon entrance into the Argentinian National Congress. In 1895 he founded the Socialist party of Argentina, which sought to reform the venal and fraudulent local assemblies. With the introduction of secret voting in 1912 by the Law of Sáenz Peña he succeeded in being elected to the Chamber of Deputies as member for Buenos Aires; he remained there until 1924, when he was appointed to the Senate.

Justo in 1909 expounded his social doctrine systematically in *Teoría y práctica de la historia*. He looked upon life as an intelligent activity through which man understands and dominates the biological world and creates the technical world with which history begins. With the development of economic activity and of means of communication cooperation arises, at first constrained, then intelligent; and as a result authority and the state are created. When authority becomes vested in a class jealous of its own privileges, the struggle of classes, which is the dynamic force of history, appears. From the standpoint of a scientific statesman rather than of an academic sociologist he analyzed Argentinian life in numerous pamphlets, articles and speeches. With a passion for individual and collective discipline he formulated the program of the Socialist party in Argentina and Uruguay; he elaborated its doctrine, directed its parliamentary activity and from his vantage point as critic in the minority party did much to shape the ideas and methods of other parties. He translated the first volume of Marx' *Capital* and adapted Marxism to Argentinian economy, enlarging on the questions of land, money and taxation. He favored direct and progressive income and capital taxes, advocated free trade and sound money by free convertibility of paper money into specie and followed the principles of Henry George in denouncing the privilege of property in land, in advocating the confiscation of the unearned increment of rent and in demanding legislation regarding leases in order to bring about the economic stability of the farmer and to encourage agricultural progress.

Justo was eminently practical and was an agnostic in religious outlook. In addition to his political activity he founded a daily, *Vanguardia*, and was instrumental in organizing cooperatives, trade unions and universities and libraries for workmen; he imported from abroad new civilizing procedures and devices—from the use of asepsis in surgery to English political practices.

ROBERTO GIUSTI

*Important works:* *El método científico* (Buenos Aires

1896, 2nd ed. 1905); *Socialismo argentino* (Buenos Aires 1915); *La teoría científica de la historia y la política argentina* (Buenos Aires 1898, 2nd ed. 1915); *Teoría y práctica de la historia* (Buenos Aires 1909, 2nd ed. 1915).

*Consult:* Obituary in *Nosotros*, vol. lix (1928) 103-06; Schweide, Iso Brante, "Die sozialistische Bewegung in Argentinien" in *Gesellschaft*, vol. v (1928) 169-73; Weil, Felix, "Die Arbeiterbewegung in Argentinien" in *Archiv für die Geschichte des Sozialismus und der Arbeiterbewegung*, vol. xi (1925) 1-51.

JUVENILE COURTS. *See* JUVENILE DELINQUENCY AND JUVENILE COURTS.

JUVENILE DELINQUENCY AND JUVENILE COURTS. In discussions of the problem child the term juvenile delinquency is sometimes loosely applied to youthful aberrance in general but it is more accurately a precise legal term defining the legal status of a child offender. Recognition of an offender as a juvenile delinquent places him in the jurisdiction of juvenile courts rather than the ordinary courts of criminal procedure; it gives him the status of ward of the state and subjects him to administrative authority or direct judicial control rather than to the processes of criminal law. He is placed under the legal disabilities and immunities of infancy. State supreme courts in the United States have held consistently that the private informal hearings of juvenile courts, their admission of social evidence, the absence of defense attorneys and the lack of trial by jury do not constitute a violation of due process of law because the child is not charged with crime. The procedure is primarily protective and educational rather than punitive, and the commission of a child to a correctional institution is deemed to be for his welfare and not for the sole purpose of inflicting penalty. Usually a specific act of misconduct must be alleged and proved in order to give the court jurisdiction over the child offender, but once he is before the court attention shifts from his act to his total situation in relation to the community. The informal procedure of the court and the regimen of correctional schools may mask real severities but on the whole there is a vast difference between a criminal procedure mitigated by occasional leniency on the part of a humanitarian judge and a legal system which accords separate consideration to offenders adjudged to be lacking in adult responsibility.

Theoretically it might be possible to trace the concept of juvenile delinquency in the grad-

ual evolution of law, which has long recognized limitations of legal capacity in childhood. Civil codes of all civilized societies have held that a child is unable to assume control of property or to contract personal obligations and have subjected him to a varying tutelage, endowing the father, mother, guardian or the court with authority to protect him from the consequences of folly and inexperience before he has reached the age of majority. It has been generally recognized that very young children are incapable of criminal intent, but the age of discretion has been placed very low—usually at seven years. Children over the minimum age limit were usually held fully responsible if they could be proved conscious of guilt. There has been no recognition of ameliorative factors, such as inadequate parental control or environmental conditioning. It is by no means demonstrated that the concept of juvenile delinquency was ever present. The line between child and adult was drawn with discrimination only where it was in the interests of profitable rights. To attribute to the early lawmakers the concept of child delinquency is pure guesswork, based on the desire to produce an ancient genealogy for a modern development.

The modifications in viewpoint and procedure which are entailed in the concept of juvenile delinquency arose from a changing public opinion, from new scientific knowledge and from the deliberate effort of social workers, humanitarians and educators. Their argument was that the common law concept *parens patriae* should be extended to criminal as well as civil law, that the immunities, privileges and disabilities which the state had already granted to children in the civil law dealing with property should be set up also as a barrier between the child offender and the rigors of adult criminal law. It was assumed that the child offender was handicapped by immaturity of body and mind and by a lack of effective parental control so that the exercise of discretion and the assumption of legal responsibility for conduct could not be exacted of him. The first comprehensive formulation in legal terms of the concept of juvenile delinquency, made by a committee of the Chicago Bar Association concerned with preparation of the first juvenile court law (1899), stated that "the fundamental idea of the law is that the State must step in and exercise guardianship over a child found under such adverse social or individual conditions as develop crime. . . . It proposes a plan whereby he may be

treated, not as a criminal or one legally charged with crime, but as a ward of the State, to receive practically the care, custody and discipline that are accorded the neglected and dependent child, and which, as the act states, 'shall approximate as nearly as may be that which should be given by its parents.' " It is evident that the intention of the sponsors of this law was to create an entirely fresh legal philosophy in the matter of crime committed by children.

The growing body of knowledge concerning the physical and mental processes of childhood furnishes the scientific basis for the concept of juvenile delinquency. Demonstration of significant differences between children and adults in memory, learning capacity, imagination, reasoning and volition have indicated that normal functioning depends upon maturation. Precise information as to the age of maturity in this scientific sense is lacking, but studies of the integrative action of the nervous system indicate that the adjustments necessary to full responsibility are impossible to the normal individual until after adult body size and weight are reached and the more subtle phases of neurological growth are completed. Whereas some individuals may attain "years of discretion" at eighteen or twenty-one, other normal individuals may require a longer period. Whatever further light research may throw on the biological nature of the causes of difference between the child's organism and the adult's, the fact of difference is now clearly established. The consequence of this observation is an increasing awareness of the child's inability to bear the full burden of adulthood.

Evidence from education and social work brings additional support to the concept of juvenile delinquency and indicates that the child's conduct is to a great degree a response to his environment. As knowledge has increased concerning the influence of emotion and personality upon behavior, techniques of child management in homes and schools have been gradually improved. Mental and physical health have become goals to be attained by following the laws of child development, and misconduct has become a problem to be solved by the use of knowledge rather than force.

The shift of emphasis from the symptoms to the causes of delinquency has led to intensive study of individual cases. Lying, stealing, truancy, stubbornness, running away, sex offenses and destructive acts are the chief objective manifestations of delinquency. In so far as

they are susceptible of a general statement it may be said that they are due to maladjustments of the child's personality; these maladjustments usually result either from an abnormal environment for the normal range of childish activities or from a warping of the child's personality through fear, antagonism and a sense of inadequacy.

The first step in understanding delinquency is the diagnosis of the child's personality. This is a cooperative task for physician, psychologist and social worker and involves prolonged observation. Evidence of physical and mental health, the objective features of environment, family background, economic and social situation, associations, recreation, school life and influence of religion become the foundation for an interpretation of the emotional and mental life of the child and for a program of treatment for the individual in the midst of his human relationships.

The clinical approach to the study of delinquency began in 1909 under William Healy in the laboratory established for the juvenile court in Chicago. Healy showed that a combination of factors is associated with delinquency and the particular combination varies with the individual case. Cyril Burt applied the analytic method to a study of English children in 1925 and reached a similar conclusion. The Rousseau Institute in Geneva and the German association for child welfare (*Zentrale für Jugendfürsorge*) have further emphasized the individual approach. Child guidance clinics have been organized in all large cities in the United States; the child guidance clinic serves as a diagnostic center and an agency of consultation for the juvenile court. It does not relieve the court of responsibility for treatment. Probation officers and social workers carry out the recommendations of the clinic and enlist the cooperation of families and schools. The educational result is therefore beyond that of the case treated; it includes the adults who assist in the administration. In 1931 a child guidance clinic was opened in London.

The habit clinic, which is usually connected with a hospital, school or state department of mental diseases, receives cases of incipient delinquency and young children subjected to handicap; it is another important resource in the treatment of delinquency. Adult education classes for parents form a further effective means of instruction in the problems of childhood. In Los Angeles, Detroit and New York City

foster mothers caring for children under the jurisdiction of the juvenile court have been instructed in classes of hygiene, nutrition, mental health and recreation. In some cities settlement houses conduct classes in child care and parents of delinquent children are urged to attend.

The two outstanding developments of the last decade in dealing with juvenile delinquency are the social control of the mental defective and the use of foster homes for the normal delinquent. The increasing use of standardized mental tests in the public schools has demonstrated that feeble-mindedness occurs among the non-delinquent population and bears no high causal relation to delinquency. Training programs for mental defectives include special education, within or without an institution, which may be followed by supervision in the community. Under such social control the feeble-minded are no more likely to commit offenses than the normal. Placement of normal delinquent children in foster homes rather than in institutions has developed chiefly in Massachusetts, California and Virginia. This method of dealing with delinquency is successful only where an extensive organization exists for child study and investigation of homes and where supervision by trained workers is adequate. No comparative study of costs exists but it is believed that foster home care is less expensive than is institutional care and its results of more permanent value.

A more recent suggestion is the control of delinquency by influencing the total social environment rather than proceeding by the case method. Studies of "delinquency areas" begun by Clifford R. Shaw in 1926 in Chicago and continued by Shaw and McKay in 1930-31 in Cleveland, Philadelphia, Seattle, Birmingham, Denver and Richmond indicate that high delinquency rates are always found in the belt of disorganized slum neighborhoods in the vicinity of business and industrial regions. These rates are relatively uninfluenced by nationality, degree of intelligence, family discord or psychological factors. The conclusion is that delinquency is correlated with the maladies of an industrial, competitive social order and can be best combated by changing the goals of civilization itself.

The Illinois law of 1899, already mentioned, introduced the juvenile court into the American system of jurisprudence. Since that time non-criminal tribunals for children have been established in all the states except Maine and Wy-

oming. In 1923 a committee appointed by the Children's Bureau to formulate juvenile court standards recommended that the age limit under which the juvenile court may obtain jurisdiction should be not lower than 18 years; at the present time over half the states have accepted this limit and in 5 states the limit is 21. In 28 states it is possible for a child charged with any offense, no matter what its degree, to be brought before the juvenile court. In some states the judge of the juvenile court may have jurisdiction at his discretion. In the District of Columbia, Georgia, Iowa, Louisiana, Massachusetts, New Jersey, New York, Utah and Vermont the law specifically excludes the juvenile court from jurisdiction in cases of felony or of crimes punishable by death or life sentence. In Ohio a recent enactment gives the juvenile court original jurisdiction in such cases.

In 1918 the Children's Bureau conducted a study of all courts, with a few minor exceptions, which have authority to hear children's cases involving delinquency or neglect (United States, Children's Bureau, *Publications*, no. 65, 1920). Of the 2391 courts addressed 1088 reported 79,946 cases of juvenile delinquency, 390 reported no delinquency cases and 556 did not report the number of cases handled. Nearly half of the courts had probation service. There were 321 courts in 43 states and the District of Columbia which were "specially organized" in the sense of offering a significant degree of specialization and organization for children's work. Of the total of 57 courts serving areas containing cities of 100,000 or more population 56 were specially organized and the other court failed to report. It is probable that most of the courts not answering the inquiry were unspecialized.

Accurate statistics as to the volume and extent of juvenile delinquency are difficult to obtain because of the lack of any precise and uniform definition of what constitutes delinquency, the variation in the age groups handled by the courts (15 to 21 being the range of the upper age limit), the numerous cases of felony by children which are brought before adult courts, the meager and inconsistent statistical records and the failure of the courts to cooperate. Statistics of cases coming before the juvenile courts have been collected by the Children's Bureau and figures are available for 1927, 1928 and 1929 (United States, Children's Bureau, *Publication*, no. 195, 1929, no. 200, 1930, and no. 207, 1931). A total of 46,312 cases

of delinquency were reported for 1929 by 93 juvenile courts representing 20 states and the District of Columbia. Because some of the children were dealt with more than once this figure represents only 41,101 children. There were 64 courts which reported cases dealt with unofficially, i.e. adjusted informally without being placed on the court calendar, and these numbered less than one third of the total number of cases reported by all the courts. In 16 percent of the official cases (89 courts reporting) and 2 percent of the unofficial cases the child was committed to an institution, and in 40 percent of the official cases and 11 percent of the unofficial cases the child was placed on probation. There were 61 courts reporting cases dismissed from probation or supervision and 14 percent of these dismissals were for purpose of commitment to an institution.

United States Census Bureau figures for juvenile delinquents in institutions are available for no year later than 1923 (United States, Bureau of the Census, *Children under Institutional Care*, 1923, 1927, p. 260-381). At that time figures were collected from 145 institutions in 46 states and the District of Columbia. On January 1, 1923, the number of children 10 to 17 years old, inclusive, in institutions primarily for juvenile delinquents was 23,003. On the basis of figures for the first six months of the year the number of children under 18 years of age admitted during the entire year was estimated at 18,640. These figures do not, however, include the entire juvenile population of correctional and penal institutions. In 1931 the juvenile delinquency section of the National Commission on Law Observance and Enforcement made a census of minors in the 98 adult penal institutions listed in the 1930 report of the Census Bureau. Data were compiled from 78 institutions, having an aggregate of 97,249 inmates, or 77 percent of the total prison population in the United States. Of these 54.8 percent were under 21 years of age when committed. The total number under 18 was 4493 boys and 228 girls, or 24.6 percent of those under 21.

Juvenile courts have been adopted also in England and throughout Europe, in Australia, New Zealand, Japan, Turkey and several other countries. European statistics are scrupulously compiled but in the absence of international definitions of delinquency and procedure comparison is almost impossible. It is believed, however, that the number of children appearing before juvenile courts is now decreasing through-

out the world, presumably because of extralegal methods of child care.

Juvenile courts in Europe were an outgrowth of American juvenile courts and for some time were guided by American precedents. Germany has had juvenile courts since 1908. The leading juvenile courts of France, Belgium, Holland and England were established by 1912. In 1930 the International Association of Children's Magistrates was organized in Brussels and 15 nations sent representatives to the convention. The purpose of the association is an interchange of the experience and ideas of those persons throughout the world who work with child offenders under judicial control, "so that young delinquent aliens may be treated according to a universal understanding."

European juvenile courts present both similarities and differences as compared with those in the United States. There are of course important variations throughout Europe. The courts of Austria, England, France, Germany and Czechoslovakia have incorporated educational ideals into existing criminal procedure, while Belgium, Holland, Spain and Portugal have created courts which depart more radically from penal methods. Throughout Europe, however, the juvenile courts are under central control and professional jurists exercise the dominant influence. In the United States there is no central control. The range of conflicting philosophies to which the child may be subjected is tremendous. For example, theft committed by a 14-year old boy may result in probation or a long term in an adult prison or commitment during minority to a juvenile training school or placement in a foster home; nor is the type of treatment always determined by differences in the child's case history. All degrees of intelligence and social experience are found in these various agencies. In the United States the local political situation and public opinion have more to do in determining juvenile court policy than a scientifically wrought plan.

According to European legal conceptions the judge must be the authoritative influence in juvenile court decisions. In Germany lay judges are nominated by the child welfare department (*Jugendamt*); they assist the judge in applying psychological and educational methods, but the treatment is primarily the responsibility of the presiding judge. This emphasis on legal authority, while found in some American juvenile courts, is entirely absent in others; in Cincinnati, for example, Judge Charles Hoffman

believing that the issues are sociological entrusts both decisions and treatment to child welfare experts, and his teaching and practise have been followed by many other American judges. In European courts there is a tendency to place the administration of juvenile probation in the hands of private organizations, doubtless because of the unprofessional nature of probation work in continental countries.

Following precedents of the Austrian law Germany has included those 18 to 21 years of age in juvenile procedure, and a strong movement has grown to withdraw those under 16 and to place them under a purely guardianship procedure. Belgium has established 16 as the age period below which children are legally *sans discernement*; Switzerland and Sweden have followed the same principle with certain modifications. Substitutes for juvenile courts are sought in a combination of what is called trustee education and boards of public welfare.

In the United States the police are dominant in the supervision of child offenders. In Europe special bureaus of police officers for children have developed but they are under judicial control whenever a child is removed from home. The American system gives to the police great discretionary powers over individuals, whereas in Europe their function is limited to preventive work under strict supervision of ministers of justice.

European juvenile courts in general, although they received their impetus from American ideals of state guardianship, have been more critically aware of the original objectives; they have developed uniform procedures closer to the civil side of the law than have American juvenile courts, which fluctuate between civil and criminal methods and are more dependent on the personality of judges, changes in public opinion and politics. The juvenile court in the United States is midway between two goals. It may develop into an agency of protection of the rights of childhood. In this case it will not administer treatment directly but will cooperate with schools, clinics and public welfare departments, all of them forming together a board of strategy to work for the best interests of the child. On the other hand, the juvenile court may become a criminal tribunal, hearing only serious cases which public and private social agencies have failed to prevent. In either case the outcome will be similar. By introducing the scientific study of cases, by individualization of treatment, by use of probation and by quickening the sense of

## Juvenile Delinquency and Juvenile Courts — Kadlec 533

collective responsibility for the neglected and forsaken child the juvenile court method has permeated the criminal court and has put its yeast into the entire system of justice.

MIRIAM VAN WATERS

See: CHILD; GANGS; ENVIRONMENTALISM; MALADJUSTMENT; SOCIAL WORK; MENTAL HYGIENE; MAJORITY, LEGAL; PROBATION; COURTS; PENAL INSTITUTIONS; CRIME; CRIMINOLOGY.

Consult: White House Conference on Child Health and Protection, Committee on Socially Handicapped, *The Delinquent Child* (New York 1932); Reckless, W. C., and Smith, M., *Juvenile Delinquency* (New York 1932); Van Waters, Miriam, *Youth in Conflict* (New York 1925); Shaw, Clifford R., and others, *Delinquency Areas* (Chicago 1929); Cooley, Edwin J., *Probation and Delinquency* (New York 1927); Healy, William, and others, *Reconstructing Behavior in Youth, a Study of Problem Children in Foster Families*, Judge Baker Foundation, Publication, no. 5 (New York 1929); United States, Children's Bureau, "Juvenile-Court Standards," Publication, no. 121 (1923); Lou, Herbert H., *Juvenile Courts in the United States* (Chapel Hill, N. C. 1927); United States, Children's Bureau, "The Child, the Family and the Court," by B. Flexner and others, Publication, no. 193 (1929); United States, National Commission on Law Observation and Enforcement, "The Child Offender in the Federal System of Justice," Reports, no. 6 (1931); United States, Children's Bureau, "Juvenile Courts at Work," by K. F. Lenroot and E. O. Lundberg, Publication, no. 141 (1925); United States, Children's Bureau, "A Summary of Juvenile-Court Legislation in the United States," by S. P. Breckinridge and H. R. Jeter, and "The Legal Aspect of the Juvenile Court," by B. Flexner and R. Oppenheimer, Publication, no. 70 (1920), and no. 99 (1922); League of Nations, Advisory Commission for the Protection and Welfare of Children and Young People, Child Welfare Committee, *Organisation of Juvenile Courts and the Results Obtained Hitherto*, 1931, iv, 13 (Geneva 1932); Abbott, Grace, "History of the Juvenile Court Movement throughout the World" in Addams, Jane, and others, *The Child, the Clinic and the Court* (New York 1925) p. 267-73; Hall, W. C., *Children's Courts* (London 1926); Burt, Cyril, *The Young Delinquent* (London 1925); Kleist, F., *Jugend hinter Gittern*, Jugendgefährnis, Menschenbildung und Menschheitsgestaltung, vol. vi (2nd ed. Jena 1931); Haackel, Heinrich, *Jugendgerichtshilfe* (Berlin 1927); Owings, Chloe, *Le tribunal pour enfants* (Paris 1923); Nachât, Hassan, *Les jeunes délinquants* (Paris 1913); Donati, Luigi, *La delinquenza minorile et la sua prevenzione* (Piacenza 1924).

KABLUKOV, NIKOLAY ALEKSEYEVICH (1849-1919), Russian statistician and economist. Kablukov worked for over two years in the statistical bureau of the Moscow zemstvo and was later engaged in gathering statistical data on rural industries in the various provinces of northeastern Russia. From 1885 to 1907 he was the chief of statistics of the Moscow provincial

zemstvo and in this capacity supervised the rural household census of 1898-1900. His introduction to the tabular report of this census, reissued later as a separate volume (Moscow 1912), offers a valuable guide to the methods employed in zemstvo statistics. At the same time he was active in the statistical section of the Moscow Law Society, which functioned as the coordinating body for the work of zemstvo statisticians. In 1894 Kablukov began teaching at the University of Moscow; his courses included statistics (*Kurs statistiki*, Moscow 1911), agricultural economics and economic theory. He was the first chairman of the Chuprov society for social sciences, affiliated with the university and editor from 1914 to 1917 of the *Statisticheskyy vestnik*, a magazine published by the society.

As an economist Kablukov was interested principally in the question of the development of Russian agriculture along capitalistic lines. He did not share the belief current in the 1870's and 1880's that national peculiarities of the Russian people would guard it against the adoption of capitalism on the western model and pointed out that even the emancipation of the peasants in 1861 was dictated by the interests of developing capitalism. He maintained, however, that the specific forms of capitalist development vary in accordance with the characteristic peculiarities of the social economic systems in different countries. In studying agricultural estates in the province of Moscow he became aware of the difficulties encountered in the organization of large scale capitalist farms in Russia, and his work on capitalist agriculture in England (*Vopros o rabochikh v selskom khozyaystve*, Moscow 1884; tr. in part as *Die ländliche Arbeiterfrage*, 2nd ed. Stuttgart 1889) convinced him that farming based on hired labor is unprofitable and inefficient. In a later study, *Ob usloviyakh razvitiya krestyanskogo khozyaystva v Rossii* (Conditions of development of peasant farming in Russia, Moscow 1899, 2nd ed. 1908), which appeared at the time when the dispute between the populists and the Marxists was at its height, Kablukov supported the contention of the former group in pointing out that small peasant farming is capable of progressive development and that this is one of the essential prerequisites for the expansion of industry in Russia.

S. PROCOPOVICH

KADLEC, KAREL (1865-1928), Czech historian of comparative Slavonic law. Kadlec occupied the chair of Slavonic law at the Charles



University at Prague from its establishment in 1899 until his death. He was general secretary of the Czech Academy of Arts and Sciences and editor of the periodical *Sborník věd právnických a státních* (Archives for legal and political science).

Kadlec was an outstanding authority on comparative Slavonic law. He broke with the romantic school and treated Slavonic legal history, which he regarded as a part of general comparative jurisprudence, in a positive and critical spirit. His special interest was the legal institutions of the Slavs before their dispersion and differentiation into various nations, for he held that the tribal characteristics of Slavonic law had not yet been scientifically established. In *Rodinný neděl čili zadruga v právu slovanském* (Prague 1898, 3rd ed. 1923) he discussed the Slavonic *zadruga*, an institution which he acknowledged to be peculiar to all agricultural peoples at a certain stage in their development and which he did not idealize in the fashion of other writers. Together with the history of Slavonic law he treated Hungarian and Rumanian law, which contain Slavonic elements, and he also investigated the law of the Wallachians as one of the foreign systems of law which operated among the Slavs. His articles in the fourth volume of the *Encyklopedja polska* summarized the history of Slavonic law up to the tenth century, which he reconstructed by the comparative regressive method. In his lectures read at the university he presented legal history from the tenth century on in separate courses on the public law of the different Slavonic peoples and in comparative treatments of the history of civil and criminal law and procedure. He was the author of *Dějiny veřejného práva ve střední Evropě* (Prague 1920, 4th ed. 1928), which studied comparatively Polish, Czech and Croatian public law as part of a system of central European law. Kadlec also devoted considerable attention to Yugoslav law, especially the Dalmatian statutes. At his death he left in manuscript a glossary of Slavonic law, the preparation and publication of which was taken over by the Czech Academy of Arts and Sciences.

#### THEODOR TARANOVSKY

*Other important works:* "Verboczovo Tripartitum a soukromé právo uherské i chorvatské slechty v něm obsažené" (Verbocz's 'Tripartitum' and the private law of Hungarian and Croatian nobility therein included) in *Česká Akademie, Prague, Rozpravy*, vol. x (1902) nos. 1, 3; *Valaši a valašské právo v zemích slovanských a uherských* (The Wallachians and Wallachian law in the Slavonic and Hungarian countries) (Prague 1916); "Les Slaves à la lumière de leur histoire politi-

que" in *Monde slave*, n.s., vol. ii (1925) pt. ii, 368-400, pt. iii, 29-61; "Statutem et reformationes insulae Brachiae" in *Monumenta historico-juridica slavorum meridionalium*, vol. xi (Zagreb 1926).

*Consult:* Taranovsky, T., *Uvod u ustorijsu slovenskih prava* (Introduction to the history of Slavonic law) (Belgrade 1922) p. 182-88; *Arhiv za pravne i društvene nauke*, vol. xxxv (1928) 1-14; Saturnik, T., in *Slovanský Ústav, Ročenka*, vol. i (1928) 51-54; Schmid, H. F., in *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Germanistische Abteilung*, vol. xlix (1929) 739-43; Odložilík, O., "Karel Kadlec" in *Slavonic Review*, vol. viii (1929-30) 204-05.

KAGWA, APOLO (1865-1927), Bantu statesman. Kagwa was converted to Christianity by Bishop Mackay of Uganda. He supported the British against the French and Mohammedan claimants of religious supremacy and trading rights in Uganda. In 1889 he became *katikiro*, or prime minister; three years later he took the leading part in drawing up the document whereby the Christian chiefs pledged themselves to emancipate their slaves. His influence largely convinced Mwanga, the *kabaka*, or king, and the people of Uganda to accept British protection. When in 1897 Mwanga revolted with the support of the Sudanese troops, Kagwa remained loyal to the British and led an army of Baganda against the rebels. He was the virtual ruler of Uganda during the long minority of the present *kabaka* and was the guiding spirit among the signatories of the Uganda Agreement of 1900, which defined the constitutional relationship between the British and the Baganda. Henceforth he was intimately associated with a succession of British administrators; he directed their educational program among his people, led the way in improving housing and sanitation and helped to further the cotton industry. Displaying keen interest in the legends and customs of the Baganda he rendered assistance to the anthropologist Roscoe and wrote two books in Luganda on the history of the Baganda kings and on Uganda folklore.

#### I. SCHAPERA

*Consult:* Gollock, G. A., *Lives of Eminent Africans* (London 1928) p. 90-105.

KAHL, WILHELM (1849-1932), German jurist. Kahl was born in Bavaria and studied at the University of Munich. He taught ecclesiastical, constitutional and criminal law at Rostock, Erlangen and Bonn and in 1895 succeeded Rudolf von Gneist at Berlin. His earliest important works are concerned with Protestant ecclesiastical law. With the exception of the important

expert opinion he rendered in 1896 in the controversy over the succession to the throne of Lippe, Kahl took little part in the development of constitutional law, which at that time was characterized by formalistic tendencies. After 1895 he devoted himself primarily to criminal law and was influential in bringing together the classical and modern schools of criminal law in the preparation of the new criminal code. Even better known than his achievements in the academic field are his practical and political contributions: he played an important part in the constitutional development of the Prussian evangelical church; he was instrumental in the reform of the criminal law and in the preparatory work for a new criminal code; he assisted in the drafting of the Weimar constitution and in subsequent legislative achievements under the republic.

Kahl's importance in the history of the social sciences in Germany is due to his peculiar combination of theory and practise. He was a follower of the German historical school of jurisprudence and of the German idealist philosophy; he did not specialize as do modern scholars and thus formed no school of his own. On the other hand, he typified the intellectual and spiritual universality characteristic of German historical and social thought in the middle of the nineteenth century. This quality was basic to his practical influence, to his unique eloquence, which was far more profound than mere oratorical technique, and to his frequently criticized capacity for compromise. He was the last representative of the so-called "political professors."

#### RUDOLF SMEND

*Important works.* *Lehrsystem des Kirchenrechts und der Kirchenpolitik* (Freiburg i. Br. 1894); "Religionsvergehen," and "Gemeinderte Zurechnungsfähigkeit" in *Vergleichende Darstellung des deutschen und ausländischen Strafrechts*, Besonderer Teil, vol. III (Berlin 1906) p. 1-109, and Allgemeiner Teil, vol. I (1908) p. 1-78; *Gegenentwurf zum Vorentwurf eines deutschen Strafgesetzbuchs*, in collaboration with F. von Liszt and others (Berlin 1911).

*Consult:* Alsberg, M., *Wilhelm Kahl* (Berlin 1929) containing a bibliography of Kahl's chief works.

KÁLLAY, BENI (1839-1903), Austro-Hungarian statesman and historian. After a previous career in parliament, in the diplomatic service and in the Ministry of Foreign Affairs Kállay served from 1882 until his death as imperial minister of finance and in this capacity was administrator of Bosnia and Herzegovina. He was

especially qualified for these responsibilities by his travels in the Near East and his constant studies in the history and literature of the Balkan nations. His administration was conducted in an enlightened but cautious and conservative spirit, natural enough considering the unbalanced state of affairs of the Hapsburg monarchy at that time. Kállay was fully conscious of the inevitable disintegration of the Turkish Empire and of the growth of Serbia which would ensue. He was aware also of the danger for the monarchy and particularly for Hungary inherent in the situation; accordingly he and Count Andrassy tried to counterbalance it by the occupation of Bosnia (1878). Kállay's administration of Bosnia consisted in developing the economic and strategic resources of the country and in trying to create a special Bosnian nationality distinct from the Serbian and Croatian. He therefore favored the Moslem landowning nobility against the Greek Orthodox Serbian and Catholic Croatian peasantry.

Among his notable literary works are *Oroszország keleti törekvései* (Budapest 1878, 2nd ed. 1879; tr. into German by H. Schwicker as *Die Orientalpolitik Russlands*, Budapest 1878), an analysis of the Russian policy in the Near East, and two works on Serbian history, *A szerbek története 1780-1815* (Budapest 1877; tr. into German by H. Schwicker as *Geschichte der Serben von den ältesten Zeiten bis 1815*, 2 vols., Budapest 1878-85) and *A szerb felkelés története 1807-1810* (2 vols., Budapest 1909; tr. into German by S. Beigel as *Geschichte des serbischen Aufstandes, 1807-1810*, Vienna 1910). Kállay was an indefatigable fact gatherer and his judgment of the sources is sagacious and unbiased. He belongs to that class of historians so rare on the continent who combine scholarly erudition with the experience of the practical statesman.

#### ROBERT BRAUN

*Consult:* Thallóczy, Lajos, *Benjamin Kállay, Gedenkrede* (Budapest 1909); Wertheimer, E. von, "Ein ungedrucktes Memorandum Benjamin von Kállays über die Annexion Bosniens" in *Ungarische Rundschau*, vol. III (1914) 425-34, especially 425-26.

KAMÁL MAHMAD NÁMŪK (1840-88), Turkish publicist. Kamál was educated by private tutors except for a brief period of formal schooling in Constantinople. The descendant of eminent government officials who had suffered from the arbitrary rule of the sultans, he was impressed at an early age with the ideas of resistance to evil and revolt against despotism. As a

young man he came under the influence of Şhînâsî, who was endeavoring to attract the Turkish intellectuals to western culture, and at about twenty he began his journalistic career as a contributor to Şhînâsî's newspaper, *Tâvûz-ı Afkâr*, in which he attacked fearlessly the old regime. In 1864 he became its chief editor and allied himself with the Young Turk movement. From then on he lived the feverish life of a revolutionary agitator, frequently suffering prison and exile; the government occasionally effected his removal from the capital by appointing him to provincial offices.

Kamâl became the most prominent of the group of remarkable men who in a mediaeval environment laid the foundations of a new era. He aimed at a literary, political and social awakening in Turkey and through his essays in the periodical press, through his historical novels, plays, poems and histories, he tried to give the Turks a new interpretation of their past and a new idea of their destiny. In 1866 he fled to London, where he published the organ of the Young Turks, *Hürriyat* (Liberty), which was distributed secretly in Turkey. Upon his return in 1871 he published the daily *'İbrat* (Instruction), the most influential periodical in modern Turkey, which not only strove to bring about a public spirited progressive government but also to develop new principles in morality, in family life and in the position of women and to create a new and simpler language. Kamâl's patriotic play, *Wâdân* (Fatherland, Constantinople 1872), was produced in 1873 and created a wave of frenzied enthusiasm. In the play, which stressed devotion to the fatherland rather than the older loyalties to the sultan and Islam, a Turkish girl dressed as a man became a soldier in a defensive war against Russia. *Wâdân* was suppressed after its second performance.

Kamâl never completed his history of the Ottoman Empire, which he considered his life work. *Madkhal*, the introduction, deals with Roman and Islamic history to 1046. The history proper goes only so far as the death of Sultan Selim I (1520). These works are, however, more significant for their style than for their historical value. Kamâl's other historical writings deal with biographies of prominent Turks and with remarkable episodes in Turkish history. He also translated into Turkish the works of Montesquieu, Rousseau and Bacon.

Despite the constant suppression of Kamâl's works they were circulated secretly in Turkey and had a revolutionary effect upon public

opinion. They were an important force in creating the concept of a Turkish nation and in introducing western ideas. Kamâl's outstanding part in the development of modern Turkish prose has earned him a unique position in literary history.

AHMET EMIN

*Consult.* Wells, Charles, *The Literature of the Turks* (London 1891) p. 148-206; Carra de Vaux, B., *Les penseurs de l'Islam*, 5 vols. (Paris 1921-26) vol. v, p. 189-96; Babinger, F. C. H., *Die Geschichtsschreiber der Osmanen und ihre Werke* (Leipzig 1927) p. 370-71.

KAMIEŃSKI, HENRYK MICHAŁ (1812-65), Polish nationalist and social philosopher. A nobleman and landowner, Kamiński played both a political and an intellectual role in the struggle for national independence. He took part in the armed insurrection of 1830-31 and in the years following was active as a member of a secret revolutionary society and as one of the leaders of the "enthusiasts," the group of writers and intellectuals who were fostering a national Polish consciousness. Because of his revolutionary activity he was banished to northern Russia for three years. After his return he freed the serfs on his estates and went to live in Switzerland.

Like Cieszkowski Kamiński sought to work out a system of national Polish philosophy. Except for stating the general philosophic principle of activism, that existence is justified by action rather than by thought, he was concerned not so much with metaphysical principles as with the development of a system of social economics applicable to a rejuvenated Polish nation. He elaborated his views in his chief work, *Filozofja ekonomji materialnej ludzkiego społeczeństwa* (The philosophy of material economy of human society, 2 vols., Poznań 1843-45): accepting as basic the law of progressive development of society he viewed the institution of private property as indispensable to progress and adopted the general principle of harmony of individual and social interests operating through the mechanism of exchange. He regarded labor as the source of wealth and judged the social adequacy of an economic system by the extent to which it provided the people with opportunity to work; he stressed particularly the right of the peasant to the soil. He condemned all forms of exploitation whether based on physical force or on intellectual superiority. In *O prawdach żywotnych narodu polskiego* (On the vital truths of the Polish nation, Brussels 1844), written under

the pseudonym Filaret Prawdoski, he argued convincingly that the success of a political uprising against Russia depended upon the emancipation of the peasants, who would thus be won for the cause of national freedom. In his *Rosja i Europa-Polska* (written under the pseudonym X. Y. Z., Paris 1857; tr. into French as *La Russie et l'avenir*, 1858), a profound analysis of Russian government and society, Kamiński advises Poland to strive toward an understanding with Russia without renouncing national independence. He was probably the first to point out that the Russian agrarian commune was not an original autonomous institution as represented by the Slavophiles but an organ created by Russian bureaucracy in the interests of the state and the nobility.

FRANCISZEK BUJAK

Consult: Korbust, G., in *Wiek XIX, sto lat myśli polskiej* (The nineteenth century; one hundred years of Polish thought), ed. by B. Chlebowski and others, vol. ix (Warsaw 1924) p. 152-61; Limanowski, B., preface to abbreviated ed. by Z. Daszyński-Goliński of Kamiński's *Filozofja* . . . (Warsaw 1911); Głabieński, S., *Ekonomika Społeczna*, vol. i- (Lwów 1905- ) p. 339-41.

K'ANG YU-WEI (1858-1927), Chinese political theorist and reformer. After receiving a classical education K'ang Yu-wei traveled through China, visiting Hongkong and Shanghai, where he was impressed by the achievements of western civilization. In 1891 he opened a school in Canton to teach what he conceived to be the "new learning," an eclectic conglomeration of Confucianism, Buddhism, the rational philosophy of neo-Confucianism and the rudiments of western science. Later he established a similar school in Kweilin. Convinced that China's salvation lay in reform along western lines, he started during the Sino-Japanese War the first political reform movement by organizing in a memorial to the emperor over a thousand candidates who were in Peking for the imperial civil service examination. He continued to petition the throne for radical political reforms and in 1898 won the confidence of the emperor Kuang-hsü, who soon proclaimed far reaching reform measures drafted largely by K'ang and his associates. When the inevitable reaction set in, the emperor was deprived of political power and K'ang fled to Japan. Remaining loyal to the idea of a constitutional monarchy he founded among the oversea Chinese the Pao Huang Tang, a society for the protection of the emperor and for Chinese reform. It attained a considerable fol-

lowing but with the development of Sun Yat-sen's movement it gradually experienced a loss of prestige.

K'ang Yu-wei's political philosophy as expressed in his *Ta Tung Shu* (The book of the great communion) was a peculiar combination of Confucianism and Buddhism intermingled with socialistic theories. It was based upon a highly utopian paragraph in the seventh book of the *Li Ki*, where the ideal state was described as the great world unity in which there was no private property and everyone had suitable employment. K'ang acknowledged the Buddhist conception that life is endless suffering and laid down the principle that political thinking should aim at relieving man's suffering and enhancing his happiness. Human suffering comes from the division of mankind into contending groups, like the family, the religious sect, the state and the race. In K'ang's utopia all such groupings are to undergo gradual elimination, ending in the abolition of national boundaries and the development of a world state.

In his theory of the Confucian canon K'ang was a follower of Liu Feng-lu (1776-1829), who had tried to prove that the *Tso Chuan* was an independent history and not a commentary on the Confucian *Ch'un Ch'iu*. K'ang developed the latter's ideas and won them serious consideration. He tried to revive Confucianism by reinterpreting it to conform with modern conditions. To him Confucianism was international and progressive. Its true doctrines were, he claimed, to be found only in Confucius' own writings. In his *Hsin Hsueh Wei Ching K'ao* (Forged classics of the new dynasty, Peking 1891) he condemned a number of the classics as forgeries of the Ancient Script school, attempting to prove with copious documentary evidence that these most readable and therefore most influential of the Confucian texts were forged by Liu Hsin (d. 22 A.D.) for the support of the dynasty founded by Wang Mang (9-23 A.D.). But when all these texts including the *Tso Chuan* and the *Chou Li* are excluded, very little is left of Confucianism; thus the great leader of the last revival of Confucianism unwittingly sounded its death knell as a state religion. His theories have, however, exercised great influence upon modern Chinese thought.

HU SHIH

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**KANKRIN, COUNT EGOR FRANZEVICH** (Georg Cancrin) (1774-1845), Russian statesman and economist. Kankrin, the son of a German engineer in Russian employ, went to Russia in 1797. He attracted attention with his *Fragmente über die Kriegskunst* (St. Petersburg 1809, 2nd ed. Brunswick 1815) and from 1811 to 1820 occupied important positions in the army supply service. In 1821 he was appointed to the State Council and from 1823 to 1844 served as minister of finance. By exercising the most rigid economy, avoiding an increase in the public debt and rationalizing the organization of the ministry and its accounting system he succeeded in balancing the normal budget and in raising the badly shaken credit of the government virtually to par. He imposed only one new tax, a moderate tobacco excise, and with a view to increasing revenue and combating official corruption restored the farming out of the government liquor monopoly. Public revenue was also increased by the protectionist tariffs which he substituted for the prohibitory tariff of 1822; he used them deliberately, changing the rates from time to time, to tax the privileged classes and to encourage the development of industry either by the promise of huge profits or by the threat of foreign competition. A similar interpenetration of fiscal and economic considerations characterized the currency reform of 1839-43. Since the assignats (paper money) were at a discount of 70 to 80 percent in terms of silver, he refused to follow the program of Speransky and the previous finance minister, Count Guryev, who resorted to foreign loans in an attempt to raise the value of the assignats to par. Kankrin proposed instead to stabilize paper money in relation to silver at the ratio of  $3\frac{1}{2}$  to 1. The economic progress of Russia and the increased Russian output of gold favored the success of the plan and in 1839 the silver ruble was declared the standard coin. In 1840 the government issued in exchange for gold and silver deposit certificates backed in full

by a metallic reserve. The succeeding stages of the reform—the issue of credit notes with a metallic coverage of one sixth begun in 1841 and the exchange of assignats and deposit certificates for credit notes begun in 1843—were carried through at the initiative and insistence of Emperor Nicolas I despite the opposition of Kankrin, who feared the abuse of credit note issue by the government, an eventuality which came to pass during the Crimean War. Aided by currency stabilization, protection and measures taken to promote technical education Russian industry advanced rapidly during Kankrin's administration.

As a writer on economic subjects Kankrin showed more understanding of contemporary Russia than the German-Russian economists of the Smith-Say tradition. He was critical of the abstractness and rationalism of classical economics, anticipated List's critique of free trade and some of the ideas of the historico-ethical school and treated mercantilism in a manner resembling the later work of Schmoller.

#### SOLOMON KUZNETS

*Important works:* *Über die Militär-Ökonomie im Frieden und Krieg*, 3 vols. (St. Petersburg 1820-24); *Weltreichthum, Nationalreichthum und Staatswirtschaft* (Munich 1821); *Die Ökonomie der menschlichen Gesellschaften und das Finanzwesen* (Stuttgart 1845).

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**KANT, IMMANUEL** (1724-1804), German philosopher. A professor at the University of Königsberg during his entire academic life, Kant left an influence on modern philosophy which is unexampled in its scope. His philosophy, known as criticism or critical idealism, besides producing several schools of disciples formed the point of departure for the development of the various philosophies of absolute idealism. In regard to social science and social philosophy Kant's influence was felt both through the repercussions of his general philosophy and through the applications which he himself made in his works on philosophy of history, philosophy of law, anthropology and the like.

For a proper understanding of Kant's thought one must begin not, as is ordinarily thought, with the *Critique of Pure Reason* but with the *Critique of Practical Reason*. In the didactic and methodic order of Kant's writings the former precedes the latter, but in the real, systematic order Kant maintains always the primacy of the practical reason. At the center and focus of Kant's thought there is always to be found the concept of transcendentalism and the transcendental problem of freedom. But freedom here means for him not chance or arbitrariness, not an antithesis to law; it signifies rather the highest realization of the idea of law in the universe. Man is free as an ethical subject; for although as an ethical subject he is governed by a universal system of laws, the system is not one which is imposed on him from without through the impersonal compulsion of things or through the command of an external authority but rather one that he has given to himself. The concept of freedom thus coincides for Kant with the concept of self-legislation, or autonomy. He does not maintain that man is free from the domination of the law of causality: as an empirical being, as a phenomenon in space and time, he is on the contrary bound by it; and all his acts taken as purely empirical appearances fall under this law. But over against this order of mere nature stands another order, the order of ends; the noumenal world over against the phenomenal world, the *mundus intelligibilis* over against the *mundus sensibilis*. In this noumenal order man reveals himself as free because, while here too he is subjected to law, this relationship in no way implies a dependence upon a foreign will but rather brings his own will to realization. By his own will must be understood of course not desire and sensuous inclination but the pure will of reason, the norm of practical reason. "A rational being must always regard himself as giving laws either as member or as sovereign in a kingdom of ends which is rendered possible by the freedom of the will. . . . Morality consists then in the reference of all action to the legislation which alone can render a kingdom of ends possible. This legislation must be capable of existing in every rational being, and of emanating from his will, so that the principle of this will is, therefore, never to act on any maxim which could not without contradiction be also a universal law, and accordingly always so to act that the will could at the same time regard itself as giving in its maxims universal laws." This sums up what Kant means by the fundamental

ethical law, the categorical imperative. This law implies also that man as a subject of moral self-legislation can be subjected to no other norm than one that he can regard as rational and recognize as intrinsically necessary. Man can never be considered and treated as a mere means, as a cog in the social machine; on the contrary, he is and remains, ethically considered, an unconditioned end in himself. This self-legislation includes the state of being an end for oneself: autonomy includes autotelicity. The categorical imperative may therefore be expressed more precisely and completely in the form: "So act as to treat humanity, whether in thine own person or in that of any other, in every case as an end withal, never as a means only."

If the principle of transcendental freedom is also to be maintained and validated in the field of theoretical philosophy, then indeed nothing short of a complete intellectual revolution is necessary. The nature of the problems treated by previous metaphysics must be changed from the ground up. Metaphysics started out from the concept of being; it attributed to being a definite nature, i.e. definite predicates which belong to it necessarily and inherently, and it taught further that it was the function of knowledge to apprehend these predicates completely. The truth of knowledge thus consisted in the fact that in knowledge the essence of things was correctly and adequately copied. The revolution made by Kant, which he himself compared to the work of Copernicus, consists in the fact that he does not begin with any dogmatic description of being in order to determine on this basis the concept and nature of knowledge but rather starts with an inquiry into knowledge in order that in the end he may advance to being, to firmly grounded propositions about the reality of things. In this sense the key to the problem of knowledge lies for him in the fact that knowledge must not be regulated by things, but that things as empirical objects must be regulated by the fundamental condition of the faculty of knowledge. For as objects of experience (as phenomena) they can be given to us only in the form of experience and according to its fundamental and universal laws; these laws in turn depend, however, on the form of the understanding and on its a priori basic functions. Thus here too the spontaneity of the pure understanding, the free lawmaking power of the theoretical faculty, becomes a condition for every judgment concerning the being of objects, a condition for objective truth. Here too we can

"know of things a priori what we ourselves put into them"; we find an order in nature, in the appearances of space and time, because these appearances in order to be known by us must have assumed the form of knowledge, i.e. must be determined in accordance with the general and necessary rules of perception and pure thought.

The idea of freedom stands at the center of Kant's philosophy of history and his social philosophy, and it is this idea which determines their entire construction. "One can," he explains in his *Idee zu einer allgemeinen Geschichte in weltbürgerlicher Absicht* (1784), "regard the history of the human race in general as the fulfilment of nature's secret plan to prepare an internally and, for this purpose, also externally complete system of government, as the only condition in which it can fully develop all its designs on mankind." Thus the greatest problem for the human race and the greatest concrete task placed before it become the attainment of a universal law administering civil society; i.e. a society which is not founded on a mere relationship of might, a relationship of rulers and ruled, but which considers every one of its members as an end in himself, as a free agent who participates in the constitution and administration of the whole and who to that extent heeds the laws only because he has given them to himself. In the development of this thought Kant follows primarily the natural right doctrine of Rousseau, who is for him the "Newton of the moral world." He too bases the state and society on the idea of the social contract, but in the formulation of this contract he differs from Rousseau especially in that he lays a much greater stress upon the pure ideal significance of the idea of contract. The original contract is for him no empirico-historical fact, but it remains nevertheless or rather for this reason the guiding maxim behind all legislation and all civil and social administration. It is by no means necessary to assume it as an actual fact—indeed this is quite impossible; it is rather a mere idea of reason, which has, however, its unquestionable practical reality; namely, "to bind every law giver to make his laws in such a way as they could have sprung from the united will of an entire people, and to regard every subject, in so far as he wishes to be a citizen, on the basis of whether he has conformed to that will."

The historical significance of Kant's social and political philosophy lies not in the specific content of these propositions, which he took

from the natural right doctrines of the seventeenth and eighteenth centuries, but rather in the fact that he translated these propositions into the language and systematic relations of his critical philosophy. The effect of this translation was twofold. In the first place, it separated natural right or natural law as the basis of social and political thought from all confusion with natural law in the physical sense. What the political rationalists had called natural laws were for Kant the laws of freedom or moral laws; and these were applicable to the sense world as regulative maxims side by side with the theoretical laws of science, since both emanated, although in different ways, from the free law-making powers of the human spirit and neither represented the naked laws of being. In the second place, by setting up the content of natural right as the contribution of moral reason or the noumenal world acting in opposition to the sense world Kant, whether intentionally or not, introduced a principle of development into his political theory where the theorists of the Enlightenment had seen only the fixed and eternal principles of natural law, which were incidentally those of political individualism and parliamentary democracy. Because the principles of freedom were regulative maxims, Platonic ideals rather than fully realized facts, it soon became apparent that the immanent ideal force behind these principles was superior to any specific rational interpretation of them made at a given stage of human history. It was in this way, for example, that Fichte proceeding on a Kantian basis developed the principles of socialism by reinterpreting Kant's doctrine of the autonomy of the will and simultaneously overthrowing the individualistic version of the social contract idea.

Because of the immanence of such fertile seeds in his doctrine the influence of Kant's social philosophy has been no less profound than the theoretical developments which proceeded from his *Critique of Pure Reason*. The philosophy of German idealism, as it took form in the systems of Fichte, Schelling and Hegel, proceeded essentially from his doctrine. Hegel's doctrine that world history is a progress in the consciousness of freedom and that the essential task of all philosophy of history consists in recognizing the necessity of this progress is in a certain sense the complete expansion of the principle formulated and established by Kant in his *Ideen* of 1784. Hegel of course substituted for the Kantian opposition of the noumenal and phenomenal worlds, by means of which freedom is realized,

the objective dialectic of the historical process; and as a result he deviates fundamentally from Kant in the construction of his own philosophy of law and political theory. He rejects and even subjects to sharp criticism the notion of natural law from which Kant set out, and he not only makes law identical with the positive law of the state but makes the state the basis of ethics instead of ethics the basis of the state. Fichte, on the other hand, followed closely, as has been said, the original Kantian tendency; and he has the essential merit of having derived from it definite, concrete consequences, which have penetrated deeply into the modern doctrine of society and which moreover have had a lasting influence on the development of the socialistic theories of the nineteenth century.

Fichte was enabled to draw new consequences from the Kantian doctrine of ethics and politics principally by bringing together far more closely than Kant had done the moral world of ends and the phenomenal world of things. The moral personality of the individual, which belongs to the kingdom of ends and which is in no way to be determined by the world of things or the empirical influences exercised by the world of things, must for Fichte express itself in the phenomenal world by imposing its form, its action, upon it. This conception, when taken in connection with the Kantian categorical imperative bidding us to regard all personalities as free ends and never as means, meant that the problem of freedom and expression for one personality could not be solved without a simultaneous and organic solution of the problem of freedom and expression for all personalities. Otherwise the free expression of one personality would mean the exercise of empirical pressure and empirical determination on other personalities. Thus for Fichte individual ethics was dissolved into social ethics. Moreover another consequence of bringing closer together the moral and the sense worlds was to introduce a continuity between ethics and politics where Kant had left too large a gap. For Fichte the moral life in relation to the state was not confined to a legitimizing of political obedience as a moral necessity; it included the duty of rationalizing the state in accordance with moral principles—otherwise the moral life could not be properly carried on even in its own sphere. From this Fichte deduced the necessity for economic socialism (cf. *Der geschlossene Handelsstaat*, Tübingen 1800) as an element of the political administration necessary for the liberation of the individual.

But while enlarging the activity and power of the state Fichte, unlike Hegel and the philosophies derived from Hegel, sought to make the state itself subordinate to the invisible moral society. In this way he remained faithful to the original Kantian conception of the moral autonomy of personality, while deducing from it both a non-individualistic ethics and a program of enlarged state functions.

In their joint relationship the basic ideas of Kant and Fichte have exercised an important influence on the formation of socialistic theories in the nineteenth century. While strict Marxism attached itself to Hegel, the influence of the Kantian tradition has been manifest in the case of non-Marxian socialist thinkers and sometimes even in the case of professed Marxists as well. Among the pioneers of German social democracy Lassalle should be mentioned as having derived some of his ideas from Fichte. Later within the movement of German neo-Kantianism the close connection between Kantian ethics and socialism was strongly emphasized by Hermann Cohen and Paul Natorp. They pointed out that socialism was a necessary consequence of the Kantian categorical imperative and that the socialist movement was essentially a moral movement whose philosophic basis is best expressed in the Kantian moral philosophy.

An increasing interest in Kant is also manifest among the political and intellectual leaders of the socialist movement. Among the French socialists Jaurès particularly referred to Kant in his thesis *De primis socialismi germanici lineamentis apud Lutherum, Kant, Fichte et Hegel*. In Germany the revisionist movement headed by Eduard Bernstein may be said to reflect the Kantian influence in its denial of the historical inevitability of socialism as preached by Marx and in its consequent stress upon the moral aspect of socialism. On the other hand, a quite different interest in Kant is represented in the writings of the Austrian socialist Max Adler. Disregarding the usual affinity drawn between the Kantian moral philosophy and the socialist movement Adler seeks to combine a more or less orthodox Marxism with Kant's theoretical philosophy, or critical methodology of science.

In contrast to the influence of Kant on the socialist movement mention should be made of the neo-Kantian school of jurisprudence represented by Stammler. Taking advantage of the Kantian critical metaphysics Stammler rehabilitates in his doctrine of the just law the essential contention of the old theory of natural right but



gives to natural right a variable content, corresponding to what is just under given historical conditions rather than to a fixed natural principle for all time. In this way he avoids what he regards as the formalism and circularity of the legal positivists, who confine themselves to what the law is and never discuss its relations to the human purposes which it seeks to express. While regarding the just law as the regulator of social and economic life Stammler contrasts law and economics as form and content, the line of demarcation between which he defines once and for all. Unlike many of the philosophical neo-Kantians he is opposed to socialism and to any alteration of the present constitutive distinction between the sphere of law and that of private economic activity regulated by law.

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KARADŽIĆ, VUK STEFANOVIĆ (1787-1864), Serbian language reformer and nationalist leader. Vuk, the son of a Herzegovinian peasant, is especially important for his work in the field of linguistics and literature. He raised the popular Serbian tongue to the level of a literary language. He introduced phonetic spelling, brought the popular vocabulary into lexicographical form and improved the Serbian grammar. He collected folk songs, tales and proverbs, translated the New Testament and by overcoming the enormous resistance of unenlightened tradition brought about the conditions prerequisite to the development of the newer Serbian literature. Skerlić has called him the "chief author of Serbian nationalism in the nineteenth century," for his work was instrumental in bringing the Serbians, hitherto under the Turkish yoke and scarcely known to Europe, into proud self-consciousness. It was as a result of his efforts that Serbian folk songs were brought to the enthusiastic attention of Goethe, Jacob Grimm and Alexander von Humboldt; and it was his active preparation and cooperation that enabled Ranke to write his important work on Serbian history. The spread of Serbian nationalism was accelerated not only by this new interest on the part of western thinkers but also by the very nature of the reform Vuk introduced, which had its roots in the language and customs of the mass of the people. The idiom of the peasants and herdsmen now took on all the dignity of a literary language, and the Serbian nation became aware of its past as reflected in song and tradition. In his researches Vuk embraced the whole of Serbian nationality, unlimited by administrative or religious boundaries, and thus brought to the Serbs a new realization of their intellectual and cultural unity. Maintaining that the essence and strength of the Serbian people were centered not in the "European" Serbs of Hungary but in those in the southwest—Serbia, Bosnia, Herzegovina and

Montenegro—Vuk was largely responsible for the emphasis on the Balkan character of Serbian nationalism.

Vuk indignantly opposed the attempt to force on the Serbians the labored designation Illyrians and put forward the untenable concept that in the then existing kingdom of Croatia there were no Croats but in addition to Slovenians only Catholic Serbians. Actually, however, Vuk's reform of the Serbian language aided Gaj in his reform of the Croatian language; through the work of these two men the Greek orthodox and the Croatian parts of the Serbo-Croatian nation attained a common literary language, even though one used the Cyrillic and the other the Latin alphabet. In 1850 Vuk organized in Vienna a formal literary convention, in which distinguished intellectual leaders of Croatia took part; adopting as its basic principle the view that "one people must have one literature" this convention proclaimed the phonetically written dialect of southern Herzegovina as the common literary language of the Serbians and Croats, thus erecting a milestone on the road to Yugoslav unity.

HERMANN WENDEL

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KARAGEORGE, PETROVIĆ (1768-1817), Serbian nationalist and statesman. One of the founders of modern Serbia, he was of peasant stock and fought in the Austrian army against Turkey. Among the chief organizers of the Serbian rising in the pashalic of Belgrade caused by the intolerable oppression of the Dahis, the chiefs of the Janizaries, in 1804 he was chosen commander in chief of the insurrectionary forces. The revolt began as a typical peasant insurrection. Even Karageorge believed that his principal task was to free the pashalic of the "bad" Turks rather than of Turkish dominion in general. Later, however, as the movement succeeded and as it became obvious that an agreement with the sultan could not be arrived at peaceably, Karageorge yielded to the influence of the Serbian intellectuals of Austria-Hungary and directed the movement toward complete independence, appealing to the Serbs of other Turkish provinces to join him. He won popular support in his own province and in 1811 was proclaimed hereditary ruler of Serbia by the

Skupshtina (national assembly). Although recognized by the European countries this move was effected only after a long and embittered struggle with other leaders and led to party differences which considerably weakened national resistance. During Karageorge's rule schools and courts were established and a national government was organized under a constitution which aimed at centralized control. The withdrawal of Russian support, due to the war between Napoleon and Russia, led, however, to renewed attacks by Turkey and to the signal defeat of the Serbs in 1813. Karageorge fled to Austria and then to Russia but returned in 1817 intending to foment a general revolt of all Christians in the Balkans, after a new rising under Miloš Obrenović had ended in 1815 in a compromise agreement with the Turks. Shortly after his return he was murdered, probably with the connivance of Obrenović. Nevertheless, the relative success of Karageorge's earlier insurrection gave a tremendous impetus to the movement for the liberation of the Serbs and of all the southern Slavs living under foreign dominion.

The idea of Yugoslav unity was furthered by Karageorge's descendants. His son, Prince Aleksander Karageorgević (1806-85), who reigned from 1842 to 1858, was primarily interested, however, in transforming Serbia from a Turkish province into a modern European state and therefore devoted himself to laying the foundations of government and to sponsoring an educational renaissance. The grandson of Karageorge was King Peter I (1844-1921). He encouraged parliamentary government and his reign from 1903 to 1921 marked an era of relative prosperity.

FERDO ŠIŠIĆ

Consult: Vukićević, M., *Karageorge*, 2 vols. (Belgrade 1907-12); Ćorović, V., *Karageorge* (Belgrade 1923); Novaković, S., *Vaskrs države srpske* (3rd ed. Belgrade 1914), tr. into German by G. Grassl as *Die Wiedergeburt des serbischen Staates (1804-1813)* (Sarajevo 1912); Temperley, H. W. V., *History of Serbia* (London 1917) p. 180-95, 226-38.

KARAMZIN, NIKOLAY MIKHAYLOVICH (1766-1826), Russian historian and man of letters. Karamzin, who matured in the second, reactionary half of Catherine II's reign, represents a generation averse to politics and inclined toward literature. Early in life he shed the liberalism borrowed from the Masonic friends of his youth, the Novikov group, and in the course of time became increasingly conservative; thus in 1811 he spoke for the nobility in opposing

Speransky's liberal reforms in a memorial on the old and new Russia (*Zapiska o drevney i novoy Rossii*) presented to Alexander I. Karamzin's significance in the history of Russian culture is manifold. As a writer he inaugurated the short period of sentimentalism which followed the pseudo-classicism of the eighteenth century. His tales, *Bednaya Liza* (tr. as *La pauvre Lise*, Paris 1808) and *Natalya, boyarskaya doch* (Nathalie, a boyar's daughter), the earliest and best novels of this school, won for him a large following among readers and writers. More important is his contribution to the reform of the literary language, in which he anticipated Pushkin. Striving after French elegance he substituted a graceful prose and a number of neologisms of his own for the heavy Germanic-Latin syntax of Lomonosov and old Slavonic idioms. His *Pisma russkago puteshestvennika* (tr. as *Travels from Moscow . . .*, 3 vols., London 1803), describing his journey through Germany, France, Switzerland and England in 1789-90, introduced Russian readers to the literary and philosophical novelties of contemporary Europe but failed to indicate any comprehension of the significance of the French Revolution.

Karamzin's chief and most lasting work is *Istoriya gosudarstva rossiyskago* (History of the Russian state), which presents a general survey of Russian history from the earliest times to 1611. It was begun in 1803, when he received from the government an annual stipend and the title of historiographer, and was left unfinished at Karamzin's death. The history, emphasizing the personalities of the rulers, acquired immediate popularity; it was written attractively, vividly portraying the heroes as models of virtue while painting the villains an uncompromising black. Its scientific value, however, is limited to the extensive notes which furnished excerpts from primary sources, of which some had hitherto been unknown and others have since been lost. Karamzin followed the established authorities for various periods, such as Schlözer and Shcherbatov, and remained faithful to the traditional interpretation of Tatishchev which regarded autocracy as the sole state building factor in Russian history. For this reason Karamzin's history served under Nicholas I as the banner for the forces of the official "Russian orientation."

PAUL MILIUKOV

**Works:** A collection, which does not include the history, correspondence and a number of other writings, was first published in 8 volumes (Moscow 1803-04); the best later edition is in 9 volumes (4th ed. St. Peters-

burg 1834-35). The first edition of the history appeared in 8 volumes (St. Petersburg 1818); the first complete edition is in 12 volumes (St. Petersburg 1818-29); the best later edition is the 5th with a valuable guide by P. M. Stroeve (St. Petersburg 1842-43). There exists a German translation of the history (11 vols., Riga 1820-33), and one in French by St. Thomas and Jauffret (11 vols., Paris 1819-26).

**Consult:** Pogodin, M. P., N. M. Karamzin, 2 vols. (Moscow 1866); Miliukov, P. N., *Glavniya techeniya russkoy istoricheskoy misli* (Main currents of Russian historiography) (2nd ed. Moscow 1898) p. 147-258; Mirsky, D. S., *A History of Russian Literature* (London 1927) p. 79-84.

KARAVELOFF, LUBEN (1837?-79), Bulgarian revolutionist, author and folklorist. Karaveloff, whose parents were engaged in commerce in the Balkan mountains, traveled in his youth through Bulgaria, Serbia and Bosnia, thus attaining a wide knowledge of the life of the Bulgarian people, which was to serve him in his works on folklore. In 1857 he went to Russia, where he remained until 1866; this sojourn was of decisive significance for his later political and literary activity and for the genesis and formation of his ideas. In Moscow he associated with the radicals prominent in the 1860's and was considerably influenced by the socio-political critique of Herzen, Bakunin, Chernyshevsky, Dobrolubov and Pisarev, which aroused him to constructive activity for the political and social liberation of his fatherland and his people. This activity was first concentrated in journalism: Karaveloff contributed informational, propagandist reports and articles on Bulgaria to Russian journals; published ethnographical, folklore material, such as his *Pamyatniki narodnago bita Bolgar* (Memorials of Bulgarian folk customs, Moscow 1861); and wrote tales of Bulgarian life. After his return to the Balkans in 1867 he soon attained a leading position in the emigrant movement in Belgrade and Bucharest. In Belgrade he became the authoritative teacher of the Bulgarian legionaries, whom he provided with completely new aims and duties, conceiving of the revolutionary organization of the masses as the only real means of carrying on the struggle against Turkey. He was active also as a publicist among the Serbs and soon attained a leading role in the Serbian radical youth movement which cooperated with the Bulgarian legionaries.

Karaveloff's chief activity was carried on between 1869 and 1874. After the rupture between the "old" emigrants, who sought liberation through Russian intervention and demanded for the Bulgaria of the future a plutocratic constitu-

tion with a bicameral system, and the younger radical democratic and social revolutionary progressives Karaveloff became in 1871 chairman of the newly formed Central Revolutionary Committee. Supported by V. Levski he organized a network of revolutionary organization cells throughout Bulgaria, which were to serve as the skeleton of the revolutionary army. The newspapers edited by him, *Svoboda* (Liberty) and *Nezavisimost* (Independence), also served the same end, the revolutionary awakening of the people to active warfare against foreign domination. After his retirement from political life in 1875 Karaveloff devoted himself to literary and cultural pursuits.

Karaveloff held that the liberty and independence of Bulgaria were to be attained only through revolutionary civil warfare and self-liberation. He attacked not only the Ottoman system of political and economic domination over the Balkan peoples but also its parasites, the opportunist Bulgarian patricians. Stressing the idea of a Balkan federation he advocated the principle of the solidarity of the Bulgarian interests with those of the other Balkan peoples, the Serbs and the Greeks. In his *Weltanschauung* he was a rationalist and positivist: "knowledge is power." He was thus in favor of practical positive knowledge to be dedicated to the attainment of improvements in material conditions of living, in the natural and economic sciences, in social progress and in the democratic organization of social life.

JOSEF MATL

*Works:* *Sochineniya*, 8 vols. (Ruschuk 1886–88).

*Consult:* Semenoff, N. P., *Lubin Karaveloff, sa vie et ses oeuvres* (Fribourg 1897); Klincharov, I. G., *Luben Karavelov* (in Bulgarian) (Sofia 1925); Angelov, B., *Bulgarska literatura*, 2 vols. (Sofia 1923–24) vol. II, p. 191–213.

KAREYEV, NIKOLAY IVANOVICH (1850–1931), Russian historian and sociologist. Kareyev graduated from the University of Moscow in 1873, taught at Warsaw University from 1879 to 1884 and at the University of St. Petersburg from 1885 to 1899, when he was dismissed for advanced political views. He was able to continue teaching at the Alexander Lyceum and at the Polytechnic Institute (from 1902 to 1907) since neither of these institutions was controlled by the Ministry of Public Instruction. In the years preceding the 1905 revolution he was active in politics as member of the Constitutional Democratic (Cadet) party, to whose program of au-

tonomy for national minorities he was particularly attached, and in 1906 he was elected to the Second Duma. In 1907 he resumed teaching at the University of St. Petersburg, where he remained until he was retired on a pension by the Soviet government.

Kareyev belongs to the generation of Russian intelligentsia which was influenced by the revolutionary struggle of the populists (*narodniki*) against the government of Alexander II, and his prolific writings reflect their preoccupation with the agrarian problem and their social idealism. Kareyev's earliest studies dealt with the position of the French peasantry on the eve of the revolution, a controversial question which his researches in French archives helped to clarify. In the last twenty years of his life he returned to the subject of the French Revolution, publishing monographs on the Paris sections, on the revolutionary committees and on the historiography of the revolution. His doctoral dissertation on the basic questions of philosophy of history, which elicited a lively controversy upon its publication in 1883, was the first of his many works on philosophy of history and on sociology. Opposed to historical materialism, he emphasized the importance of individuality and individual volition in the historical process and advocated a subjective-teleological interpretation of history; thus he shared the views of the Russian subjective sociology school of Lavrov and Mikhaylovsky and had points of contact with Simmel and Dilthey.

Kareyev's writings on French and Polish history and his collaboration on French scientific publications brought him renown abroad, particularly in France. In Russia he was most widely known for his six-volume text of modern European history, of which he prepared many abridgments for secondary school and college use, and for his five "typological" courses, in which he surveyed important historical periods emphasizing the typical political institutions. Before the World War he was very popular with the Russian youth, with whom he kept in close touch as professor, as leader of many private study circles, as chairman of the St. Petersburg organization for promoting self-education—the Russian prototype of the English university extension—and as author of general essays intended as aids in forming a *Weltanschauung* and in advancing intellectual and moral development.

PAUL MILIUKOV

*Important works:* *Krestyane i krestyansky vopros vo*

*Frantsii v posledney chetverti xviii veka* (Moscow 1879), tr. by C. W. Woynarowska as *Les paysans et la question paysanne dans le dernier quart du xviii<sup>e</sup> siècle* (Paris 1899); *Les sections de Paris pendant la Révolution française* (St. Petersburg 1911), published simultaneously in Russian; *Istoriya zapadnoy Evropy v novoe vremya* (History of western Europe in modern times), 6 vols. (St. Petersburg 1892-1910), the first five volumes of which passed through several editions; *Osnovnye voprosy filosofii istorii* (Basic questions of the philosophy of history), 2 vols. (Moscow 1883; 3rd ed. in 1 vol. St. Petersburg 1897); *Sushchnost istoricheskogo protsessa i rol lichnosti v istorii* (The meaning of history and the role of personality in the historical process) (St. Petersburg 1890, 2nd ed. 1914); *Stariye i novye etudy ob ekonomicheskoy materializme* (Old and new essays on economic materialism) (St. Petersburg 1896); *Vvedenie v izucheniye sotsiologii* (Introduction to the study of sociology) (St. Petersburg 1897, 2nd ed. 1907); *Pisma k uchashcheyshya molodezhi o samoobrazovanii* (Letters to young students on self-education) (St. Petersburg 1894, 9th ed. 1907).

KARISHEV, NIKOLAY ALEXANDROVICH (1855-1905), Russian economist. In the years 1885 to 1899 Karishev, a graduate of the University of Moscow, taught economics and statistics at various institutions of higher learning in Moscow, St. Petersburg and Dorpat. During some of this time he lived on his estate in the province of Ekaterinoslav, where he was active in zemstvo work, particularly in developing and improving rural education. From 1889 to 1891 he also directed the economic division of the Moscow zemstvo, where he initiated systematic assistance to peasant agriculture.

Karishev was a prolific writer on economic and social subjects, particularly those related to agriculture and agrarian organization. He contributed numerous articles to newspapers and magazines and from 1893 to 1898 published monthly economic-statistical surveys in the popular magazine *Russkoe bogatstvo* (Russian fortune). In *Trud, ego rol i usloviya ego prilozheniya v proizvodstve* (Labor, its role and the conditions of its application to production, St. Petersburg 1897) he provided the first instalment of a system of inductive-descriptive economics, which he strongly championed in opposition to abstract theory. His most important work, *Krestyanskiya vnenadelniya arendi* (Peasant tenancies, Moscow 1892), is a thorough analysis based on a large collection of zemstvo statistics. The renting by peasants of lands owned by the nobility was an important feature of peasant economy in post-reform Russia; it resulted from the inadequacy of allotments granted the peasants at the time of their emancipation and reflected a hunger for land which was becoming more acute with

the natural increase of the peasantry. Karishev described the amount and geographic distribution of peasant tenancies, the variation in the form and terms of the leases and the influence of the system on peasant agriculture, the intensification of which it retarded. He found that the demand for rentable land exceeded its supply; that land was rented mostly under one-year leases and often through intermediaries; that leases calling for rent in kind (share of the crop or labor) were increasing; and that rent per unit was inversely correlated with the size of the peasant's own holdings. In a posthumous collection of articles, *Iz literatury voproso o krupnom i melkom sel'skom khozyaystve* (Problem of large and small scale agriculture; ed. by A. Fortunatov, Moscow 1905), he advocated the development of cooperative agriculture on the basis of the Russian land commune (*obshchina*) in preference to capitalistic large scale farming on the one hand and small scale peasant proprietorship on the other.

K. KOCHAROVSKY

*Consult:* Kaufman, A., in Russia, Ministerstvo Narodnago Prosveshcheniya, *Zhurnal* (1905) no. 5, p. 1-16.

KARL FRIEDRICH, MARGRAVE AND GRAND DUKE OF BADEN (1728-1811). Karl Friedrich was distinguished for his attempt to introduce physiocratic principles into the administration of three villages in his province. Practically he was concerned with lightening the burden of feudal regulations and with restricting the excessive subdivision of peasant property. As opposed to large feudal estates and farm tenancy he encouraged the ownership of land by the peasant cultivator. At the same time he claimed as a sovereign the right of coproprietorship and the reversion of a share of the net product in the form of a land tax. His views as well as his reforms, which were unsuccessful, were tinged with a certain cameralistic-fiscal patriarchy characteristic of German physiocracy and particularly of Schlettwein, his learned adviser and assistant. The margrave received advice also from French sources; his correspondence with Mirabeau and DuPont de Nemours (ed. by Karl Knies, 2 vols., Heidelberg 1892) forms an important contribution to the physiocratic literature. The *Abrégé des principes de l'économie politique* (printed originally in *Éphémérides du citoyen*, vol. i; published separately, Karlsruhe 1772; reprinted in E. Daire's *Physiocrates*, Paris 1846, pt. i, p. 367-85), in which the margrave summarized his views, is nearest to pure physio-

cratic doctrine and reflects at the same time the rationalist conceptions of the age of Enlightenment.

LOUISE SOMMER

*Consult:* Emminghaus, A., "Karl Friedrichs von Baden physiokratische Verbindungen, Bestrebungen und Versuche" in *Jahrbucher für Nationalökonomie und Statistik*, vol. xix (1872) 1-63; Moericke, Otto, *Die Agrarpolitik des Markgrafen Karl Friedrich von Baden*, Volkswirtschaftliche Abhandlungen der badischen Hochschulen, vol. viii, no. 2 (Karlsruhe 1905); Draß, K. W. L. von, *Geschichte der Regierung und Bildung von Baden unter Karl Friedrich*, 2 vols. (Karlsruhe 1816-19).

KÁRMÁN, MÓR (1843-1915), Hungarian educator. Kármán played a decisive part in the modernization of the educational system of Hungary. While he owed much to the ideas of Herbart he possessed considerable originality. After two years in Leipzig, where he worked with Ziller, Kármán returned to Hungary and in 1872 joined the faculty of the University of Budapest as *Privatdozent* in pedagogy, psychology and ethics; later he became professor. He influenced the entire Hungarian educational system as teacher, writer and public official and trained a new generation of teachers. The earliest result of Kármán's activity was the reform of the elementary school curriculum. His most important sphere of activity, however, was the high school. Here he gave expression to the strong national spirit in education which developed when Hungary regained its autonomy. The entrance of the middle classes into the high schools and the addition of the natural sciences to the curricula led Kármán to the promotion of three types of high schools emphasizing respectively the historical sciences, the natural sciences and preparation for scholarship. At the same time Kármán considered also the possibility of a unified school in which national literature, history and geography as well as various elective languages would be taught all pupils. In methodology he was an adherent of Ziller's theory of cultural stages and formed the curricula accordingly. Kármán assigned the methodological and pedagogical training of high school teachers to the philosophical faculty, to which high schools were attached as practise schools. The curriculum and disciplinary system which he worked out for the secondary schools dominated Hungarian education until 1927.

HELMUT WIESE

*Important works:* *Középiskolai tantervek* (Budapest 1888), tr. into German as *Beispiel eines rationellen*

*Lehrplanes für Gymnasien*, Sammlung pädagogischer Abhandlungen, vol. iii (Halle 1890); "Ungarn" in *Handbuch der Erziehungs- und Unterrichtslehre für höhere Schulen*, ed. by A. Baumeister, vol. 1, pt. ii (Munich 1897) p. 315-64; *Ungarisches Bildungsweisen: geschichtlicher Überblick bis zum Jahre 1848* (Budapest 1915).

*Consult:* *Emlékkönyv Kármán Mór* (Budapest 1897); *Magyar paedagogia* (1916) no. 10, an issue devoted to Kármán and containing a bibliography of his works; Kont, I., "L'oeuvre d'un pédagogue hongrois" in *Revue internationale de l'enseignement*, vol. lxii (1911) 325-27.

KARO, JOSEPH BEN EPHRAIM (1488-1575), Jewish codifier and commentator. Karo was born in the Iberian Peninsula and as a child witnessed the expulsion of the Jews from Spain in 1492 and from Portugal in 1496. He was brought by his family to Turkey and after 1535 lived at Safed in Palestine, the intellectual center of the refugee Spanish Jews. Together with his teacher Jacob Berab he attempted in 1538 to renew the old Talmudic ordination, which would have led eventually to the convocation of a great Sanhedrin empowered to issue new laws for the Jewish people, but the movement failed because of the opposition of the Jerusalem rabbis.

Two extensive commentaries on the great mediaeval codes of Jacob ben Asher and Maimonides constitute Karo's chief work. In his *Beth Yosef* (4 vols., Venice and Sabionetta 1550-59) supplemented by the *Bedek ha-bayith* (Salonika 1605) Karo subjected Jacob ben Asher's code to close scrutiny and supported it by extensive quotations from the original sources of Jewish law down to his own contemporaries, frequently, however, reaching an independent conclusion. In his *Kesef mishnah* (4 vols., Venice 1574-75; tr. into French by J. de Pavly and M. A. Neviasky as *Rituel de judaïsme*, 12 vols., Orléans 1898-1917) he rendered the same service to Maimonides, defending him especially against the attacks of ibn Daud.

But it is to a brief synopsis written primarily for pedagogic purposes rather than to these extensive works that Karo owes his great prominence in the history of Jewish codification. In his *Shulchan aruch* (Venice 1565) he adopted Maimonides' method in stating the law briefly without quotations from previous authorities. Unlike Maimonides, however, Karo eliminated all Talmudic laws which were no longer applicable in his own time. In this respect as well as in the whole arrangement of the four parts he followed the lead of Jacob ben Asher. The book at first provoked vigorous opposition, particu-

larly on the part of the German-Polish rabbis, who saw in its decisions a one-sided glorification of the Spanish-Jewish ritual and customs. It also found a strong competitor in a similar compilation by Mordecai Jaffe. Nevertheless, it soon became and still remains the authoritative code of laws for orthodox Jewry. This achievement was partly due to the work of an opponent, Moses Isserles, who through his criticisms helped to spread rather than to destroy its authority. The Polish rabbis of the seventeenth century further enhanced its authority through their own extensive commentaries. On the other hand, the book has always been severely denounced by anti-semitic writers who, lifting certain statements out of their context, managed to give them an unfavorable connotation. Liberal Jews in modern times have likewise frequently attacked it as the embodiment of Jewish "legalism."

SALO BARON

*Consult:* Cassel, D., "Josef Karo und das Maggid Mescharim" in *Lehranstalt für die Wissenschaft des Judenthums*, Berlin, *Bericht*, no. 6 (Berlin 1888) p. 3-10; Friedberg, B., *Rabbenu Yosef Karo*, in Hebrew (Drohobycz 1895); Tschernowitz, C., *Die Entstehung des Schulchan-Aruch* (Berne 1915).

KASIM AMIN (c. 1865-1908), Egyptian social reformer. Kasim Bey Amin studied law in France and he was thereafter employed in the government service for twenty-three years, first with the Mixed Tribunal and finally as judge of the Native Court of Appeal.

He was one of the pioneer champions of women's rights in the Islamic world and the author of *Tahrir al-mar'ah* (Cairo 1899; tr. into German by O. Rescher as *Über die Frauenemanzipation*, Stuttgart 1928) and *Al-Mar'at al-jadidah* (A discussion on the rights of women, Cairo 1901; Russian translation by I. U. Krachkovsky, St. Petersburg 1912). The subject status of women is a tenet of the Islamic faith and these literary labors for the emancipation of eastern womanhood would have had little effect against fanatical conservatism but for Kasim Amin's presentation of the reform. He not only protested against regarding emancipation as antireligious but presented it rather as a religious reformation and a revival of the equal and equitable status assigned to women by primitive Islamic society. His argument that the harem and purdah are not in their origin Islamic but Iranian and are due to the corruption of Turkish and Arabic tribal liberty and sexual equality by Byzantine and Persian despotisms and disenfranchisements was sufficiently convincing to

obscure the more fundamental religious fact of the attitude of Mohammed toward woman as expressed in the Koran.

His second and more sound approach was that emancipation is not only in the interests of the sex but in the interest of society. It is indeed disputable whether women gain by sacrificing the sufficient if subordinate economic provision for all sorts and conditions of womankind secured them in the Islamic community in return for the more prominent but far more precarious prospects of economic competition with men. Kasim Amin, however, in insisting that by subjecting women Islamic society lost its vitality gave the feminist cause a more convincing case than it had hitherto had. He urged such specific reforms as improved education for girls, a gradual transition from their existing status to one of economic independence, the abolition of polygamy and changes in the divorce law. Kasim Amin's work aroused considerable interest in most of the Islamic countries; but the effect of such academic attacks as his can easily be overestimated, and Egypt, the field of his labors, is now one of the less fertile in feminist progress.

GEORGE YOUNG

*Consult:* Rescher, O., Introduction to his German ed. of *Tahrir al-mar'ah* (Stuttgart 1928).

KASKEL, WALTER (1882-1928), German jurist. Early in his career Kaskel entered the national insurance office, where he aided in the solution of the many legal problems arising from the recently codified social insurance law. Later he became municipal counselor for the city of Schöneberg (now part of Berlin). In 1913 he began to teach at the University of Berlin, where he became professor in 1920; he taught with equal success also at the Berlin Handelshochschule, the Hochschule für Politik and the Verwaltungsakademie for the education of public officials.

Kaskel may be regarded as the founder of the science of modern German labor law. *Das neue Arbeitsrecht* (Berlin 1920, 2nd ed. 1920) and the textbook *Arbeitsrecht* (Berlin 1925; 4th ed. by H. Dersch, 1932) furnished the first legal elaboration of this new field of law, which has come to be of basic significance for the whole of German legal development. In his legal-dogmatic and systematic works Kaskel expounded with unparalleled clarity all the new legal concepts which underlie the modern tendency toward socialization of the law. His system of German labor law is now generally accepted. In addition

Kaskel's numerous essays and longer works have on many occasions provided the definitive expositions of various special problems of labor law.

Kaskel's writings on labor law were preceded by studies in social insurance law; the *Grundriss des sozialen Versicherungsrechts* (in collaboration with F. Sitzler, Berlin 1912) achieved an importance in this field almost equal to that later attained by his labor law writings. Kaskel was also the founder and codirector of two periodicals which have become of fundamental importance, the *Neue Zeitschrift für Arbeitsrecht* (1921) and the *Monatsschrift für Arbeiter- und Angestellten-Versicherung* (1913).

German legal science of the 1920's possessed scarcely any systematizer who could be compared with Kaskel. In his philosophy of law he was a positivist, but the charge of specialization and one-sidedness which is frequently made against him is unfounded, for he always recognized the interdependence of all fields of law. He realized especially the necessity of combining theory with practise, and on this account he exercised during the third decade of the present century an influence on the evolution of legislation and the administration of justice which scarcely any other university professor could match.

HANS PETERS

*Consult:* *Juristische Wochenschrift*, vol. lvii, pt. iii (1928) 2880-90; Peters, H., in *Monatsschrift für Arbeiter- und Angestellten-Versicherung*, vol. xvi (1928) 578-83.

KATKOV, MIKHAIL NIKIFOROVICH (1818-87), Russian journalist. Katkov was a professor of philosophy at the University of Moscow from 1845 to 1850 and in 1851 leased from the university its daily newspaper, *Moskovskiya vedomosti* (Moscow Gazette). He began to take his journalism seriously in 1856, when he established a monthly, *Russky vestnik* (Russian messenger). In 1863 he returned to the Moscow Gazette, with which he was associated in the last twenty-four years of his life as owner and editor. In this capacity he made a reputation as an independent journalist who was allowed unusual latitude in his criticism of the government and whose opinion carried weight in high circles. In fact, however, he had no genuine insight into political problems and was merely trimming his sails to impending changes in government policy. His apparent independence was the result of protection accorded to him by Alexander II and

Alexander III, who regarded Katkov as a conservative guide of public opinion.

Although in his youth he belonged to an advanced group of intellectuals led by Belinsky, as editor of the Moscow Gazette Katkov attacked most persistently and venomously the radical intelligentsia and the national minorities. He violently denounced the Polish insurrectionists of 1863 and thereafter detected "Polish intrigue" or radical inspiration in whatever incurred his displeasure. The virulence and occasional brilliance of his editorials scarcely compensated, however, for the instability of his opinions. Although for a number of years he advocated close collaboration with Germany he died a Francophile. Originally a rabid free trader, he later became an extreme protectionist. During the period of liberal reforms under Alexander II, Katkov professed admiration for the aristocratic institutions of old England and for this reason favored the establishment of local self-government (*zemstvo*) and trial by jury; but he attacked them most bitterly and called for an increase in gentry representation on *zemstvo* organs when after 1870 and especially after the accession of Alexander III government policy turned reactionary. In this period he advocated also Count Dmitry Tolstoy's educational reform, which for ulterior purposes stressed the study of Greek, Latin and mathematics in secondary schools.

PAUL MILIUKOV

*Important works:* 1863 *god. Sobranie statey po polskomu voprosu* (1863. Collection of articles on the Polish question), 2 vols. (Moscow 1887); *Sobranie peredovukh statey Moskovskikh vedomostey, 1863-1887 godov* (Collection of editorials of the Moscow Gazette, 1863-87), 25 vols. (Moscow 1897-98).

*Consult:* Sementkovsky, R., *M. N. Katkov* (St. Petersburg 1891); Liwoff, G., *Michel Katkoff et son époque* (Paris 1897).

KAUFMAN, ALEXANDR ARKADIEVICH (1864-1921), Russian statistician and student of agrarian problems. Kaufman, a converted Jew, was graduated from the University of St. Petersburg in 1885 and from 1887 to 1905 was in the service of the Ministry of Agriculture. Until 1893 he took a prominent part in a study of Siberian peasantry organized by the ministry, devoting particular attention to the immigrants from European Russia who settled in the provinces of Tobolsk and Tomsk. In the course of this study, whose methods followed those previously developed by *zemstvo* statisticians, Kaufman clearly grasped the characteristic features in the development of peasant land tenure



in Siberia. He found that despite the absence of serfdom and the relative freedom from administrative pressure the original individual holding of land by right of occupation had been changing, with the growing shortage of land, in the direction of increasingly communal and equalitarian forms of tenure; the unhampered evolution of landholding in Siberia appeared thus to reproduce the development of the land commune in Russia proper. This evolutionary scheme, constituting an important original contribution, Kaufman presented in a manner characteristic of his methods first in an article (in *Vestnik Evrope*, 1893, no. 6), then in a small book (*Krestyanskaya obshchina v Sibiri*, The peasant commune in Siberia, St. Petersburg 1898) and, finally, in a large tome (*Russkaya obshchina v protsesse eya zarozhdeniya i rosta*, The Russian commune in the process of its birth and growth, Moscow 1908). After 1893 he concentrated upon problems of governmental land policy in connection with new settlements in Siberia and in other Russian colonization areas and prepared a number of official reports and memoranda. He generalized some of his conclusions in *Pereselenie i kolonizatsiya* (Migration and colonization, Moscow 1905), in which he held that migration to new areas merely mitigates the acuteness of the land problem; as a radical solution he advised the intensification of agriculture, which he believed to be compatible with the maintenance of communal tenure. In 1905 and 1906 he assisted in drafting a project for the compulsory alienation of land from the nobility and its distribution among the peasants; upon the failure of this plan he was active as an agrarian expert in the councils of the Constitutional Democratic (Kadet) party. After 1908 he taught statistics in St. Petersburg. Although then past middle age and enfeebled by a chronic disease he succeeded in becoming a recognized master in a field relatively new to him—theory and methods of statistics. His treatise on statistics (Moscow 1912, 4th ed. 1922; German version as *Theorie und Methoden der Statistik*, Tübingen 1913), still the best general text in Russian, synthesizes the empirical advances of zemstvo statistics and the logical mathematical contributions of European theorists. His history of Russian statistics published posthumously (*Statisticheskaya nauka v Rossii*, Moscow 1922) furnishes the only available survey of developments in theory and methodology from 1806 to 1917.

K. KOCHAROVSKY

**KAUTILYA**, Hindu political theorist. Kautilya is identified according to ancient Indian tradition, which has been questioned by many scholars, with Chanakya, the Brahman minister of the Maurya emperor Chandragupta, who reigned from about 321 to 296 B.C. A number of European scholars ascribe the writings of Kautilya to the Gupta period (c. 320–480 A.D.). He is the reputed author of a work, long lost but recovered in 1909, entitled *Arthashastra*, which deals with the art of government, including civil law and the science of warfare. *Arthashastra* signifies the art of government, and quotations and references in the work of Kautilya and others point to a long antecedent line of individual authors and schools dealing with this subject. Kautilya's task was to summarize and put in order the chaotic ideas of these authors. His work, however, is much more than a mere synopsis; it is rather a reconstruction of the science of government. Whereas some of the older teachers in accordance with the avowed aim of *Arthashastra* to promote the security and prosperity of the state refused to include the holy *Vedas* among the four traditional sciences, Kautilya gives the *Vedas* along with philosophy, economics and politics their due place in the social economy. Nevertheless, he considers politics the determinant of all the rest, because punishment comes within its sphere. His theory of kingship, which in the interests of monarchical power derives the authority of the king from his divine nature and from a kind of social contract, was by no means fundamental and was subsequently superseded by the theory of the king's divinity by virtue of his office.

But Kautilya's theories of the state were merely incidental. He was primarily interested in the concrete problems of government, and the essence of his thought like that of his predecessors relates to statecraft in the two broad divisions of the acquisition and preservation of dominion. His guiding principle is the interest of the monarch. Education and self-discipline of the king, he urged, are the first requisites of successful government. This precept is fortified by a number of examples from traditional history, a fact which illustrates the author's application of the historical method. Expediency forms the keynote of Kautilya's rules concerning foreign relations, and in his nice balancing of policy with the circumstances of states he makes a fine art of politics. In sacrificing morality and religion to the interests of the state Kautilya, who has been called the Indian Machiavelli,

followed the example of earlier authors. He advocated the free resort to assassination for the suppression of ill disposed and wicked subjects. His rules for replenishing the treasury in emergencies include various ingenious methods for the political exploitation of popular superstitions. In general, however, he reserved his immoral statecraft for extreme cases, while elsewhere, as in his rules for the acquisition of dominion, he favored kind treatment of subjects as an important means of insuring royal rule.

Kautilya's influence upon later Hindu political theory was far reaching. He founded a tradition of statecraft which became a synonym for unscrupulous cunning and which although condemned by some was adopted by many later thinkers. His treatment of the older categories and concepts of *Arthashastra* gave them the stamp of finality in later Indian literature. Finally, his virtual reconstruction of *Arthashastra* probably helped the wholesale incorporation of its material into the law books (*Dharma Shastres*) and the *Mahabharata* (great epic).

U. N. GHOSHAL

*Works:* The *Arthashastra* was first published by R. Shamasastri (Mysore 1909, rev. ed. 1924); improved editions are by T. Ganapati Sastri in Trivandrum Sanskrit series, nos. 79, 80, 82 (Trivandrum 1924-25), and by Julius Jolly and Richard Schmidt in the Punjab Sanskrit series, no. 4, vols. i-ii (Lahore 1923-24). An English translation was prepared by R. Shamasastri with an introduction by J. F. Fleet (3rd ed. Mysore 1929).

*Consult:* Banerjee, N. C., *Kautilya*, vol. 1- (Calcutta 1927- ); Stein, Otto, *Magasthenes und Kautilya*, Akademie der Wissenschaften, Philosophisch-historische Klasse, Sitzungsberichte, vol. xcxi, pt. v (Vienna 1921); Ghoshal, U. N., *A History of Hindu Political Theories* (2nd ed. London 1927) ch. iii; Nâg, Kâlidâs, *Les théories diplomatiques de l'Inde ancienne et l'Arthasâstra* (Paris 1923) chs. ii-v, tr. by V. R. Ramchandra Dikshitar in *Journal of Indian History*, vol. v (1926) 36-50, 235-66, 331-58, and vol. vi (1927-28) 15-35; Kane, P. V., *History of Dharmasâstra*, vol. i- (Poona 1930- ) p. 85-104; Winternitz, M., *Geschichte der indischen Literatur*, 3 vols. (Leipzig 1905-20) vol. iii, p. 509-29.

KAUTZ, GYULA (1829-1909), Hungarian economist. Kautz studied in Pest, Berlin, Heidelberg and Leipzig and taught first in Pozsony and later in Nagy-Várád and at the superior technical school in Pest. From 1863 to 1868 he was professor of public and administrative law and from 1868 to 1892 of economics and finance at the University of Budapest; after 1865 he was a member of parliament and from 1892 to 1900 governor of the Austro-Hungarian Bank. In

economics he was influenced primarily by Roscher, but he also devoted much attention to the doctrines of Hildebrand, L. von Stein and F. B. W. von Hermann. His interest centered mainly in the history of economic doctrines, in which he was undoubtedly the leading figure of his epoch. This fact was recognized not only by Karl Knies but also to a greater or less extent by Alfred Marshall, Ingram, Schumpeter and most of the new historians of economic theory. His works are characteristically comprehensive in scope; they display broad knowledge of the literature, great accuracy and amazing industry. Kautz endeavors always to explain economic phenomena and economic doctrines in relation to the general political and social development of their periods. Because of the wide range of his researches in the history of economic thought he was in many respects a pathfinder. He contributed much to the correct understanding of Cantillon and was also the first to point out the significance of the doctrines of Gossen. Essentially a follower of the older historical school, Kautz retained its eclectic tendency: with a basic emphasis on the spatial and temporal diversity of economic phenomena and special preference for socio-ethical considerations he still attempted to introduce in his discussions fragments of classical doctrine. He was stronger in comprehensive, synthetic research than in analysis and creativeness. In the main his method was narrative rather than critical; his style somewhat turgid and fatiguing. In the field of applied economics he was particularly interested in problems of currency and credit; in his practical work he emphasized the interests of an independent but liberal Hungary. Kautz was the author of the first Hungarian textbook in economics.

THEO SURÁNYI-UNGER

*Important works:* *Theorie und Geschichte der National-Ökonomik*, 2 vols. (Vienna 1858-60), *Politika vagy orszádgazdaságtan* (Politics or political science) (Pest 1862; 3rd ed. 1878); *A nemzetgazdaság- és pénzügytan* (Economics and finance), 3 vols. (Pest 1863; vol. i 5th ed., vols. ii-iii 4th ed. Budapest 1880-90); *Nemzetgazdaságunk és a vámpolitika* (Our national economy and the customs policy) (Pest 1866), *A nemzetgazdasági eszmék fejlődési története és befolyása a közszükségletekre Magyarországon* (Pest 1868, new ed. 1911), abridged translation by Sigmund Schiller as *Entwicklungs-Geschichte der volkswirtschaftlichen Ideen in Ungarn und deren Einfluss auf das Gemeinwesen* (Budapest 1876); *A társulási intézmények a nemzetgazdaságban* (Social institutions in the national economy) (Pest 1871, new ed. 1887).

*Consult:* Földes, Béla, "Kautz Gyula emlékezete" (Commemoration speech on Julius Kautz) in *Budapesti szemle*, vol. vi (1911) 321-72.

KAVELIN, KONSTANTIN DMITRIEVICH (1818-85), Russian political philosopher and publicist. Kavelin received a doctorate at Moscow in 1844 for his dissertation on Russian law courts in the seventeenth and eighteenth centuries. He taught legal history at the University of Moscow from 1844 to 1848 and civil law at the University of St. Petersburg from 1857 to 1861 and at the Military Law Academy from 1878 until his death. In the years intervening between these professorships he was in the government service. His work as a scholar was not of lasting value. In accordance with his general view that social development involves the transition from a clan society with the individual personality completely submerged to a political society providing for the complete emancipation of the individual personality he supported Ewers' theory of clan organization as characteristic of the early period of Russian history. Kavelin's work on psychology and ethics, with which he was occupied after the political tide had turned reactionary in the late 1860's, was intended merely to provide a broad philosophical basis for the idealism of Russian youth and a refutation of positivism and materialism.

Kavelin is most important as a political philosopher and publicist. In the decade following his graduation he was affiliated with the westernists as the friend of Belinsky, Granovsky and Herzen but later showed himself a true conservative, a *narodnik* (populist) with a monarchist bias. He advocated the emancipation of peasants with land in order to create a conservative property owning class of farmers; for a similar reason he championed a moderate form of village community. At the same time he was skeptical of constitutional reform because it would transfer the dominant role in the state to the nobility and bourgeoisie and so disturb the political balance. Although in 1877 and again in 1881 he pleaded for the emancipation of the judiciary from political control, for greater autonomy in local government and for the introduction of members elected by the zemstvo organs into the State Council (the "Loris-Melikov constitution") he remained a consistent exponent of the idea of "social monarchy" or "autocratic republic," i.e. "a free czar independent of both the nobility and the plutocracy."

SOLOMON KUZNETS

*Works:* A nearly complete collection of Kavelin's works has been edited by D. A. Korsakov, 4 vols. (St. Petersburg 1897-1900), with biographical notices and appreciations by D. A. Korsakov, V. D. Spasovich

and A. F. Koni. His essay on communal tenure is translated by I. Tarassoff as *Der bauerliche Gemeindebesitz in Russland* (Leipzig 1877) and his correspondence with Herzen by B. Minzes as *Sozial-politischer Briefwechsel* (Stuttgart 1894).

KAY-SHUTTLEWORTH, SIR JAMES (1804-77), English educational reformer. Kay was born in Rochdale and graduated in medicine from Edinburgh. In 1842 he married Janet Shuttleworth and assumed her name. He was a Benthamite in method, a Protestant by conviction, an Englishman in his instinct for administrative compromise, an anti-Owenite in his dislike of the French revolutionary ideal of centralized educational control by the secular state. A physician in Manchester from 1828 to 1835 and a distinguished physiological and pathological researcher, he became well known by his work among the poor during the 1832 cholera epidemic and by his writings on unsanitary living conditions among factory operatives. His careful studies inspired the establishment of the Manchester Statistical Society, which investigated the state of education in northern towns. He was for a while secretary of the Manchester Board of Health. An advocate of free trade and social reform, he saw education as the key to reform and urged the establishment of schools for poor children, libraries, mechanics' institutes, provident associations and adult classes in science, economics and domestic economy. He was appointed assistant poor law commissioner and was stationed in East Anglia from 1835 to 1838, when he was sent to London. In 1839 he was appointed first secretary to the Committee of Council on Education. Between 1834 and 1846 he designed a system of adjusting denominational schools to the central authority by means of inspection and grants-in-aid, a device which was copied for India by the East India Company in 1854 and confirmed by the British government in 1864. Partly guided by foreign experience, he introduced pedagogical training and the pupil-teacher system and tried numerous educational experiments. He devised a concordat between government and the churches on educational affairs which, although attacked by many Churchmen and Nonconformists, proved a stable foundation for the modern English elementary school system established in the acts of 1870 and 1902. After resigning in 1849 he continued to be active in public work; his chief energies went to the establishment of evening classes in east Lancashire factory towns, the development of a public relief system during

the cotton famine of 1862 and the advancement of higher education.

MICHAEL E. SADLER

*Important works:* *The School in Its Relations to the State, the Church and the Congregation* (London 1847); *Four Periods of Public Education, 1832-39-46-62* (London 1862); *Reports on the Training of Pauper Children* (London 1839); *The Moral and Physical Condition of the Working Classes Employed in the Cotton Manufacture in Manchester* (London 1832, 2nd ed. 1832).

*Consult:* Smith, Frank, *Life and Work of Sir James Kay-Shuttleworth* (London 1923), and *A History of English Elementary Education* (London 1931).

KEARNEY, DENIS (1847-1907), American politician. Kearney was born in Ireland and came to California in 1868. As a drayman in San Francisco he was for "law and order" and affected contempt for the laboring man. After the great railway strike of 1877 he became America's most proficient leader of unemployed workers, exploiting the popular slogan "The Chinese must go!" to keep San Francisco in an uproar and in constant expectation of mob violence. His vituperative speeches were directed also against selfish corporations and corporate control of government. As a result of repeated arrests he acquired the crown of a labor martyr. His success in bringing to a head the issue of Chinese exclusion he owed to the support not only of the white California worker but largely to the small employer and merchant who also felt the pinch of Chinese competition. His Working Men's party shaped and carried to adoption a state constitution favorable to his views and was a major factor in city and state politics from 1877 to 1880, but his attempt to become more than a local figure had failed utterly when he retired in 1884.

The Kearney movement, innocent of any broad social philosophy, is significant chiefly as a dramatic forerunner of the job and wage conscious trade unionism developed by Gompers and Strasser a few years later. Incidentally it contributed to creating a race issue which still makes for disunion among California workers, although the Chinese question has become much less important. Kearney's advocacy of independent labor politics had little influence.

SELIG PERLMAN

*Consult:* Eaves, Lucille, *A History of California Labor Legislation*, University of California, Publications in Economics, vol. 11 (Berkeley 1912); Commons, John R., and others, *History of Labour in the United States*, 2 vols. (New York 1918); George, Henry, "The Kearney Agitation in California" in *Popular Science Monthly*, vol. xvii (1880) 433-53.

KEITH, MINOR COOPER (1848-1929), American capitalist. Keith was the most important personal force in the economic penetration of Central America by the United States. In 1871 his brother, Henry M. Keith, secured a contract from the Costa Rican government to construct a railroad from Puerto Limón to San José. When the government funds for the completion of the project were soon exhausted, Minor Keith undertook his first piece of foreign public financing, not only raising the capital for the railroad but floating a loan to consolidate the Costa Rican external debt. To supply traffic for the railroad he introduced banana plantations along its route and popularized the consumption of bananas in the United States, where they had until then been a rare luxury; he thus initiated an industry which spread all through Central America. In 1899 Keith organized the United Fruit Company, a combination of his own interests with the interests of the Boston Fruit Company and other companies in Cuba, Jamaica and Santo Domingo. The combination, which owned plantations, railroads and ships, integrated and augmented the formerly small and scattered American interests in the Caribbean. Serious charges of monopoly were made against Keith in connection with the organization and operation of the banana industry, the largest single activity of the United Fruit Company. The company with its increasingly varied interests was the spearhead of economic and political penetration of Central America by United States capital. In 1912 Keith organized the International Railways of Central America, which combined his railroad interests in Guatemala and Salvador. His project for a through Pan-American railway route to the isthmus, linking all the Central American lines with Mexico and the United States, was not quite realized before his death. Keith's imperialist methods led to his personal flotation of a loan to the Republic of Salvador in 1922, when he signed a contract with the government by which he and the International Railways of Central America secured \$19,750,000 for the republic on condition that 70 per cent of the customs of Salvador should be administered by an American collector general nominated by the bankers with the concurrence of the United States secretary of state, any disputes arising under the loan contract to be referred to the chief justice of the Supreme Court of the United States. For his almost single handed enterprise in exploiting and developing Central America Keith has been called the American Cecil

Rhodes. The empire he created expanded. In 1931 the United Fruit Company with fixed assets of \$170,000,000 cultivated over 470,000 acres in Central America, Colombia, Jamaica and Cuba and owned about 2,830,000 unimproved acres; it owned or operated 1773 miles of railroads, 568 miles of tramways and a fleet of 105 ships.

MARGARET ALEXANDER MARSH

*Consult:* Adams, Frederick Upham, *The Conquest of the Tropics* (New York 1914); Crowther, Samuel, *The Romance and Rise of the American Tropics* (New York 1929); Bitter, Wilhelm, *Die wirtschaftliche Eroberung Mittelamerikas durch den Bananen-Trust* (Brunswick 1921); Dunn, Robert W., *American Foreign Investments* (New York 1926).

KELETI, KÁROLY (1833-92), Hungarian statistician. Keleti was the first director of the department of statistics which was organized in the Hungarian Ministry of Finance in 1867. In 1871, when largely because of his efforts the ministerial department was expanded into an independent central bureau of statistics, he was appointed its first director and remained its leading spirit for over twenty years. For a time he was editor of *Eötvös' Politikai hetilap* and of the agricultural and statistical publication of the Hungarian Academy of Science, of which he became a member in 1868.

Keleti is recognized as the founder of Hungarian official statistics. The general lines of statistical organization as laid down by him are still followed today. He introduced the use of individual census cards in the census of 1880. The compilation and textual explanations of that census as well as of the subsequent censuses of births, marriages and deaths were likewise prepared by him. He provided an exemplary organization for the collection of trade statistics. His compilation of Hungarian alimentary statistics is not only an interesting document on the standard of living in Hungary but is valuable also from the biological and medical viewpoint. Keleti played an active part in international statistical congresses, for which he prepared numerous papers and reports.

THEODORE SZÉL

*Important works:* *A politikai gazdaság kézikönyve* (Handbook of political economy) (Pest 1863); *A magyar mező gazdaság* (Hungarian agriculture) (Pest 1867); *Telekadó és kataszter* (Land tax and the cadastre) (Pest 1868); *Hazánk és népe* (Our country and people) (Pest 1871; new ed., 2 vols., Budapest 1880); *Magyarország szőlészeti statisztikája, 1860-1873* (Budapest 1875), tr. into French by F. Schwiedland as *Viticulture de la Hongrie* (Budapest 1875); *Nemzetiség*

*viszonyok Magyarországon az 1880 évi népszámlálás alapján* (National composition of the population of Hungary according to 1880 census) (Budapest 1882); *Magyarország népességének élelmészeti statisztikája* (Budapest 1887), in German as *Die Ernährungs-Statistik der Bevölkerung Ungarns* (Budapest 1887); *Magyarország népességi mozgalma 1876-ban* (Vital statistics of Hungary for 1876) (Budapest 1878), with a sequel for 1878 (Budapest 1879).

*Consult:* Jekelfalussy, J. de, in *Institut International de Statistique, Bulletin*, vol. vii, pt. 1 (1893) 155-57.

KELLER, FRIEDRICH LUDWIG (1799-1861), Swiss jurist. Keller was born in Zurich. He was professor of Roman law at the universities of Zurich, Halle and Berlin. A disciple of Savigny and a firm adherent of the historical school, he prepared himself by travel and study in France and England for a political career. In Zurich in addition to his scientific work he was active as leader of the Liberal party, which assumed the political power in 1831 and completely reformed the constitution of the republic. Keller insisted on the separation of powers and a complete reorganization of the administration of justice. In Zurich he also published his first scientific works, which established his scholarly reputation in the field of Roman law. His political career having ended in failure, he left Switzerland in 1844 and devoted himself exclusively to science, after 1847 as successor of Savigny and Puchta at the University of Berlin. He died in Berlin.

Keller's scientific works, which are few but significant, deal especially with civil procedure. His essentially practical point of view found compatibility in the Roman jurists. His wide experience as a magistrate and his highly developed political sense gave his historical works a rare degree of clarity. "It was as though he himself had seen and heard the old praetors," writes one of his disciples. Keller took special interest in the English judicial system and is to be considered as one of the first to spread knowledge of English legal institutions in Germany.

HANS FRITZSCHE

*Important works:* *Über Litscontestation und Urtheil nach classischem romischen Recht* (Zurich 1827), *Semestrarium ad M. Tullium Ciceronem libri sex*, 3 pts. (Zurich 1842-51); *Der römische Civilprocess und die Actonen* (Leipzig 1852; 6th ed. by A. Wach, 1883); *Pandekten*, ed. by E. A. Friedberg (Leipzig 1861; 2nd ed. by W. Lewis, 2 vols., 1867).

*Consult:* Schneider, A., "Rede zur Feier des hundertsten Geburtstages des Prof. Dr. Fr. L. von Keller" in *Zeitschrift für schweizerisches Recht*, n.s., vol. xix (1900) 300-20; Schwarz, A. B., "Pandektenwissenschaft und heutiges romanistisches Studium" in *Uni-*

versity of Zurich, Rechts- und staatswissenschaftliche Fakultät, *Schweizerischer Juristentag 1928* . . . *Festgabe* (Zurich 1928) p. 211-52, Fritzsche, H., *Begründung und Ausbau der neuzeitlichen Rechtspflege des Kantons Zürich* (Zurich 1931).

KELLEY, FLORENCE (1859-1932), American social worker and social reformer. She was interested in most of the social reform movements in the late nineteenth and early twentieth centuries but was most closely associated with the campaigns for protective laws for women workers, for effective child labor laws and for the establishment of the federal Children's Bureau. For the greater part of her working life she served as executive secretary of the National Consumers' League, an organization designed to use the power of consumers to remedy industrial ills, and she was largely responsible for the development of the league as an agent of propaganda and for its program of social welfare legislation.

Her education and previous experience made her unusually qualified for this work. Her interest in social problems, which was derived largely from her father, William D. Kelley, an eminent protectionist, had led her to enter Cornell University as one of its first women students; to continue her studies in Zurich, where she became interested in the doctrines of Marx; and at a later date, 1894, to take a degree in law at Northwestern University. From 1891 to 1899 she lived at Hull House in Chicago, learning at first hand about living and working conditions among the poor and seeking measures for their improvement. She was especially active in the campaign for the Sweatshop Act of 1893 and on the passage of the act was appointed by Governor Altgeld the first chief factory inspector in Illinois. Her vigorous enforcement of the law and her reports of the conditions she found in her inspections are unusual in the history of factory inspection in this country.

Florence Kelley was outstanding among the reformers of the period. She fought the battles of the workers, especially the women and child workers, with aggressiveness and determination both in arousing public opinion and in pressing legislation on the lawmaking bodies. She was much influenced by Marx and did not hesitate to show her feeling that employers were enemies who could be constrained to a minimum of decency only by legislation, nor did she fear to state openly that the goal for which she worked could never be achieved while production was carried on for private profit. She reflected the

spirit of her time in her desire for immediate remedial measures but not in her desire for the eventual overthrow of a capitalistic order; she was in accord with her time in her faith in legislation as an instrument of control but she was in advance of her contemporaries in her belief in national legislation and in her interest in skilful, intelligent administration in order to make laws effective.

HELEN R. WRIGHT

*Important works:* Translation of Engels' *Die Lage der arbeitenden Klasse in England in 1844* (New York 1886; new ed. London 1892, with special preface by Engels); *Some Ethical Gains through Legislation* (New York 1905); *Modern Industry* (New York 1914).

*Consult:* Adams, Mildred, "A Pioneer in Social Justice" in *Woman Citizen*, n.s., vol. ix, no. 12 (1924) 9, 29-30; Goldmark, Josephine, "Twenty Five Years of It" in *New Republic*, vol. xl (1924) 271-72; Lathrop, Julia C., "Florence Kelley 1859-1932" in *Survey*, vol. lxvii (1931-32) 677.

KELLEY, OLIVER HUDSON (1826-1913), American rural organizer. Kelley was born in Boston and was for a while a newspaper reporter and telegraph operator. He farmed in Minnesota from 1849 to 1864, when he became a clerk in the United States Department of Agriculture. In 1866, following an investigation of southern agricultural conditions, he conceived the idea of organizing farmers for education and social intercourse. He planned a secret fraternal society for men and women and in 1867 with six other government clerks organized the National Grange of the Patrons of Husbandry, of which he was national secretary until 1878. For five years Kelley devoted himself to the difficult work of organization, and he established the Grange soundly. Ceremonials and secrecy, deriving from Kelley's knowledge of Masonry, appear to have been effective in maintaining interest. In 1878 he ceased to be active in Grange affairs.

OLON J. BUCK

*Consult:* Kelley, Oliver H., *Origin and Progress of the Order of the Patrons of Husbandry in the United States* (Philadelphia 1875); Atkeson, Thomas C., *Semi-centennial History of the Patrons of Husbandry* (New York 1916) p. 315-17.

KELLEY, WILLIAM DARRAH (1814-90), American politician. Kelley, a native of Philadelphia, studied law and entered politics as a Democrat, serving as county attorney and as judge of the Common Pleas Court in Philadelphia. In the late 1850's falling under the influ-

ence of his townsman Henry C. Carey he became convinced that the depression following the panic of 1857 was due to free trade policies. He joined the newly formed Republican party and became one of the most ardent defenders of the protective system. His membership in the House of Representatives from 1861 to 1890 and in particular his association during much of this time with the Ways and Means Committee, of which he was chairman in the Forty-seventh Congress, enabled him to exert a decisive influence in committing the United States to a permanent policy of protective tariffs. His constant solicitude over the iron and steel schedule gained him the sobriquet of "Pig-iron" Kelley, a designation at which he took no umbrage.

Kelley's views were embodied in a volume, *Speeches, Addresses and Letters on Industrial and Financial Questions* (Philadelphia 1872), in which he held that in order to stimulate the active circulation of goods within a country it was necessary to protect capital and labor from foreign competition. By shutting out foreign products the nation also encouraged a needed inflow of immigrants and capital. Price, he maintained, was a relative term; goods were cheap not according to their money price but according to the ease with which they were disposed of in payment for purchases. Hence protection made for true cheapness of commodities by increasing the purchasing power of labor. Kelley addressed himself chiefly to the American working man and farmer. From the protective system, he insisted, every blessing was to flow. Thus in reply to an inquiry from a trade union group in 1869 concerning his stand on the eight-hour day he wrote: "Under its [protection's] influence labor is in demand, and the laborer is steadily becoming more independent; and if we perfect and maintain a system of thorough protection, you will be able to establish and maintain the eight-hour system."

After the Civil War Kelley opposed in a number of pamphlets the legislation aimed at currency deflation. He also voted against the Resumption Act of 1875 and for the Bland-Allison silver purchase bill of 1878, even joining with the majority to override President Hayes' veto of the latter measure. But in the Greenback and free silver agitations of the 1880's he played no part, leaving to Bland and other western representatives the task of championing the cause of cheap money.

A. D. H. KAPLAN

Consult: United States, Congress, *Memorial Addresses*

on the *Life and Character of William D. Kelley Delivered in the House of Representatives and in the Senate*, 51st Cong., 1st sess., House Miscellaneous Documents, no. 229 (1890); Tarbell, Ida M., *The Tariff in Our Times* (New York 1911).

KELLOGG, EDWARD (1790-1858), American monetary reformer. Kellogg was the son of a substantial Connecticut farmer and after receiving an elementary school education followed a business career in New York. He went bankrupt in the financial panic of 1837 but subsequently accumulated a competence and retired to devote himself to plans of monetary reform. His first work, *Remarks upon Usury and Its Effects* (New York 1841), was followed by *Currency: the Evil and the Remedy* (New York 1844, 6th ed. 1846), which was circulated by the aid of Greeley and the *New York Tribune*. His major publication, which passed through many editions, was *Labor and Other Capital; the Rights of Each Secured and the Wrongs of Both Eradicated* (New York 1849). After his death Kellogg's ideas continued to be promulgated by his daughter, Mary Kellogg Putnam, who had collaborated with him and who reissued his writings in many pamphlet editions between 1861 and 1868 under the title *A New Monetary System*. His basic idea was the abolition of interest, the rates of which were extremely high at the time. He suggested that the government issue legal tender notes and loan them on the security of land or other real values at 1.1 percent, which he believed to be close to the usual rate of accumulation of physical wealth in the United States. The government was also to issue bonds bearing the same interest, which Kellogg called "inter-convertible bonds" because they were to exchange freely for the notes. This system, Kellogg believed, would maintain interest rates close to 1 percent, the labor cost, as he calculated it, of carrying on banking. In fact, during the Civil War the government issued bonds which yielded 3.65 percent, and which with the establishment of the national banking system became the basis of banknote currency. Although his proposal of government notes as a substitute for private banknotes did not become a political issue for two decades, Kellogg may rightly be called the father of Greenbackism. Proposals based on Kellogg's theory and put forward by Alexander Campbell, the author of *The True American System of Finance* (Chicago 1864), were endorsed in 1867 by the National Labor Union. Although these proposals favored a 3 percent interest rate, whereas Kellogg desired to abolish interest charges in excess of

banking costs, the improvement over the current bank rates of 8 or 10 percent was sufficient, from the point of view of laborers, farmers and small merchants, to attract considerable support. This endorsement paved the way for the Greenback campaigns of 1872 and 1876; in the latter campaign the Greenback party nominated for president Peter Cooper (*q.v.*), who had long advocated the Kellogg plan. In his view that the process of exchange and the practices of a financing class deprive the producing class, which creates all values, of a full remuneration and in his proposal to eliminate these factors and to base the interest rate on the actual labor cost of running the banking system Kellogg resembled such contemporary European economists as Proudhon.

JOHN R. COMMONS

*Consult:* Commons, John R., and associates, *History of Labour in the United States*, 2 vols. (New York 1918) vol. ii, p. 119-21; Destler, Chester McA., "The Influence of Edward Kellogg upon American Radicalism, 1865-96" in *Journal of Political Economy*, vol. xl (1932) 338-65.

KELLY, EDMOND (1851-1909), American social reformer. Kelly was essentially the aristocratic humanitarian in politics and one of the few Americans of his class and type to become an avowed socialist. Born in France, he was graduated from Columbia University, practised law for many years in New York and Paris and from 1895 to 1898 lectured on municipal government at Columbia. Kelly was actively interested in the reform of municipal government, as were many men of his type at that time; and in 1892 he founded the City Club of New York, which was to mobilize the forces of "good government" against civic corruption. But the new organization, composed of conservative and wealthy people, rejected Kelly's plan that it organize a series of subsidiary "good government clubs" to appeal especially to workers. Kelly himself organized many such clubs, which contributed powerfully to the defeat of Tammany Hall in 1894. But he was disappointed by the results and concluded that "mere good government in itself did not constitute a platform upon which a political party could be maintained." His disappointment and further intellectual development led him to acceptance of a collectivist philosophy and a mild form of reformist socialism.

Originally an extreme Darwinian and Spencerian with a strong bias against socialism, Kelly subjected the individualist philosophy to severe

criticism; he asserted its validity in the natural world and in primitive civilizations but insisted that it did not imply acceptance of the contemporary program of laissez faire: "Man is no longer the mere result of his environment, but can become its master." In harmony with Lester F. Ward, who influenced his ideas considerably, Kelly defined justice as "the effort to eliminate from our social conditions the effects of the inequalities of nature upon the happiness and advancement of man, and particularly to create an artificial environment [government] which shall serve the individual as well as the race, and tend to perpetuate noble types rather than those which are base." Individualism could not offer an adequate program for a complex civilization; Kelly consequently espoused collectivism, which in terms of practical politics meant the municipal and government ownership then popular among reformers. Influenced by Fabian ideas and his own moral approach to the social problem, Kelly a few years before his death concluded that only socialism could "put an end to the three gigantic evils of pauperism, prostitution and crime." His socialism was idealist and evolutionary. An essentially moral appeal for change by means of successive reforms which would "make the Golden Rule practical." It rejected the class struggle in favor of "the whole of democracy, including employer and employee," and favored only partial elimination of competition and a kind of guild organization of industry. Kelly had some influence on men of his class and type but none on organized socialism, although the American Socialist party, despite its Marxist terminology, was in practice close to many of Kelly's ideas.

LEWIS COREY

*Important works:* *Evolution and Effort, and Their Relation to Religion and Politics* (New York 1895; 2nd ed. 1898); *Government or Human Evolution*, 2 vols. (New York 1900-01); *A Practical Programme for Workmen* (London 1906); *The Elimination of the Tramp by the Introduction into America of the Labour Colony System* (New York 1908); *Twentieth Century Socialism*, ed. by Florence Kelley (New York 1910).

*Consult:* Giddings, F. H., "Introduction" in Kelly's *Twentieth Century Socialism* (New York 1910) p. v-xii; Fuller, Paul, "Memorial of Edmond Kelly" in Association of the Bar of the City of New York, *Yearbook* (1911) p. 163-66.

KĒMÁL MÉHMĒD NÁMŪK. *See* KAMÁL MAHMAD NÁMŪK.

KEMBLE, JOHN MITCHELL (1807-57), English historian. After leaving Cambridge Kemble visited Germany, where his interest in



philology was aroused and where later he pursued philological studies under Jacob Grimm and others. He gained a reputation, first in England and then on the continent, by his edition of *The Anglo-Saxon Poems of Beowulf* (London 1833) and by the *Codex diplomaticus aevi saxonic* (6 vols., London 1839-48), a valuable if not always accurate collection of documents. His most famous work, *The Saxons in England* (2 vols., London 1849; new ed. by W. de Gray Birch, London 1876), was superseded only by Stubbs. Kemble has been criticized for his exaggerations and many of his theories concerning early European society have since been abandoned; but he will long be remembered as the first writer to make extensive use of Anglo-Saxon charters and as a powerful exponent of the "scientific" methods of Germany. Much of his writing appeared in periodicals and he was for a time editor of the *British and Foreign Review*.

Kemble was an early representative of the "Germanic school" of English nationalistic historians. He protested in the name of scientific accuracy against the liberties taken by romanticists like Scott and Thierry, but his own writings were colored to no small degree by an abounding enthusiasm for the primitive Germans and by a tendency toward a racial interpretation of history. For him the contrast between the turmoil of continental Europe amid the revolutionary upheavals of 1848 and the comparative calm of his own country was explained by England's heritage, particularly in free representative institutions, from Anglo-Saxon times. He believed in the purifying effect of the barbarian invasions on Roman society, the Germanic character of the English people and institutions and the superiority of the German stock to other races. Although lacking both the art and the desire to attract wide popular attention he exerted by his contributions to research a considerable influence on serious students; and because of the character of his views this influence helped develop a nationalist outlook.

THOMAS P. PEARDON

Consult: *Fraser's Magazine*, vol. IV (1857) 612-18; Ford, H. J., *Representative Government* (New York 1924) p. 46-49.

KEMPER, JERONIMO DE BOSCH. See BOSCH KEMPER, JERONIMO DE.

KENT, JAMES (1763-1847), American jurist. In 1779 after the dispersal of Yale's youthful student body before the approaching revolution-

ary armies Kent, while safe in a Connecticut country village, found and read "with awe" the four volumes of Blackstone's *Commentaries*. Two years later he graduated from Yale and continued the pursuit of the law in a lawyer's office, becoming familiar with Grotius and Pufendorf, with Hale's *History of the Common Law* and the old *Books of Practice*. Throughout his life a Federalist and an eighteenth century gentleman who methodically read his Greek and Latin classics, in his early days of practise Kent pieced out a living by serving in the state assembly of New York and by lecturing at Columbia College on civil government, constitutional history and the law of nations. In 1798 he entered a judicial career which brought him to the highest offices in New York state.

As a lawyer and a teacher, as judge and commentator, Kent along with Joseph Story became the most influential force in the recreation of American law in the image of Blackstone. Pre-revolutionary American law was a closed record to the lawyers of the new sovereign states. There were no printed colonial reports; the pre-war bar, which had been thoroughly Tory, was discredited and exiled. Kent's postrevolutionary generation accepted literally the dictum of the fathers of the revolution that the rights of the common law, lightly made identic with constitutional rights, were brought to the American shores by the early settlers as the heritage of free born Englishmen. But not knowing what had happened in the law imported in the seventeenth century it accepted the common law of eighteenth century England, so clearly restated in Blackstone. The population was predominantly English, and the habits and thought of the country were receptive to the English common sense embodied in eighteenth century common law. The bench and bar entrenched in Blackstone and schooled by Kent and Story likewise took over the techniques, the procedure and, for the rapidly developing commercial life, the rules of the common law, resisting the blandishments of the civil law despite the pro-French movements after the French Revolution.

As judge Kent introduced in the New York courts the practise of written opinions. At a time when English authority did not stand high he subdued opposition by a plethora of favorable precedents culled from the books; nor did he hesitate to enrich the common law by employing the *Corpus juris*, whose name his republican colleagues ingenuously revered. He was appointed chancellor in 1814 and took to the

moribund Court of Chancery his broad reading in English equity reports; by rearing there a new and powerful court on the English model he joined Story in laying the foundation of equity jurisprudence in the United States.

When he reached the statutory age limit of sixty he retired to a professorship at Columbia College. His lectures, following closely the model of Blackstone, were published as the *Commentaries on American Law* (8 vols., New York 1826-30) and became an authoritative exposition of the English common law from the American point of view and a standard interpretation of the constitution. The chapters on international law were published in England as an independent treatise under the title *Commentaries on International Law* (Cambridge 1866). Kent was particularly fortunate in that throughout his terms on the bench his court opinions were carefully recorded by William Johnson, one of the best of the early reporters, and that a generation after his death the twelfth edition of his *Commentaries* was edited by Oliver Wendell Holmes, Jr. (Boston 1873), making its influence directly traceable into the present century.

NORMAN L. MEYERS

*Consult:* Kent, James, *Memoirs and Letters*, ed. by William Kent (Boston 1898); Duer, John, *Discourse on the Life, Character, and Public Services of James Kent* (New York 1848); Hicks, F. C., *Men and Books Famous in the Law* (Rochester 1921) ch. vi, Coxe, MacGrave, "Chancellor Kent at Yale" in *Yale Law Journal*, vol. xvii (1907-08) 311-37, 553-72; Scott, James Brown, "James Kent 1763-1847" in *Great American Lawyers*, ed. by William Lewis, 8 vols. (Philadelphia 1907-09) vol. II, p. 491-533.

KETTELER, BARON WILHELM EMMANUEL VON (1811-77), German social Catholic leader. Ketteler was descended from a noble Westphalian family. He studied law and entered the government service as referendary at the Superior Court in Munster. In 1838 as protest against the imprisonment of the archbishop of Cologne and because "he did not desire to serve a state which demanded the sacrifice of one's conscience" he resigned and under the influence of Reisach, bishop of Eichstatt, turned definitely to the priesthood. From 1841 to 1843 he studied theology at Munich and in 1844 was ordained. He was a member of the Frankfort Assembly in 1848, where he worked with the Catholic group of deputies. In 1849 he became provost of St. Hedwig's in Berlin and in 1850 was ordained bishop of Mainz.

Ketteler was always occupied with political

and social matters. He was considered the adviser of the church in social questions and was recognized by Pope Leo XIII as his great predecessor in the formulation of Catholic social doctrine. Because of his rigidity and inflexibility of mind as evidenced in the *Kulturkampf* he was called the "fighting bishop of Mainz." In his speeches and writings he took a decisive stand for the freedom and autonomy of the Catholic church.

In the first period of his activity Ketteler was influenced by Lassalle in several respects. He was convinced that cooperative societies were a means of solving the social question, and he likewise placed much confidence in profit sharing. On the side of the workers the cooperative movement must of course be pursued in the spirit of Christianity; on the other hand, only genuinely Christian capitalists and manufacturers would be inclined to share their profits with the workers. During this period Ketteler looked upon the supremacy of capital and the rule of economic liberalism as the root of the social problem. They were the source of physical, material and moral disadvantages: the iron law of wages; insecurity of existence; impossibility of progress; the intellectual, moral and physical decay of the life of workers. Here the church alone could be of assistance; otherwise there was no hope of a peaceful solution of the social problem.

By 1869 Ketteler's views on the social question had undergone considerable modification. Although he was still convinced that capitalism should be abolished he realized that producers' cooperatives could never accomplish this end, and he came to recognize the possibility that either the state or the entrepreneur would initiate a policy of social regulation of industry which would mitigate the evils of capitalism and industrialism and result in the improvement of the workers' living conditions. The immediate cause of Ketteler's change in socio-political thought was the publication in 1867 by Alfred Le Roux of a catalogue of social regulations of industry. It was this later position of Ketteler's that determined the direction of Catholic social thought in Germany and which still dominates the Center party. In southern Germany and in Austria, however, there are certain Catholic groups which remain attached to Ketteler's first position; namely, that capitalism as a whole should be discarded.

G. BRIEFS

*Important works:* *Freiheit, Autorität und Kirche* (Mainz 1862); *Die Arbeiterfrage und das Christenthum* (Mainz 1864, 4th ed. 1890); *Deutschland nach dem Kriege von*

1866 (Mainz 1867); *Das allgemeine Concil und seine Bedeutung für unsere Zeit* (Mainz 1869); *Liberalismus, Socialismus und Christenthum* (Mainz 1871); *Predigten*, ed. by J. M. Raich, 2 vols. (Mainz 1878); *Ausgewählte Schriften*, ed. by J. Mumbauer with a biographical introduction, 3 vols. (2nd ed. Munich 1924).

*Consult:* Pfülf, Otto, *Bischof Ketteler*, 3 vols. (Mainz 1899); Vigener, Fritz, *Ketteler, ein deutsches Bischofsleben des 19. Jahrhunderts* (Munich 1943); Brauer, T., *Ketteler der deutsche Bischof und Sozialreformer* (Hamburg 1927); Neufeld, M. M., *Bischof Ketteler und die soziale Frage seiner Zeit* (M.-Gladbach 1927); Metlake, George (Laux, John Joseph), *Christian Social Reform* (Philadelphia 1912).

KEUFER, AUGUSTE (1851–1924), French syndicalist. Keufer was the chief organizer of one of the most powerful labor groups, the Fédération Française des Travailleurs du Livre. During the nineteenth century the typographical workers had made various attempts at organization without great results. The congress of 1881 created the federation, which three years later chose Keufer as its secretary general. He retained the office for thirty-six years, from 1884 to 1920; his emphasis on the practical aspects of union activity assured him an ever increasing influence. He took part in the frequently violent discussions which divided the field of labor between the reformists, who favored legal, progressive action, and the revolutionaries, favoring "direct action," that is, force; he was one of the chief representatives of the reformist tendency in the Confédération Générale du Travail. Keufer developed his reformist labor philosophy in *L'éducation syndicale* (Paris 1910). He played an important role in the rise to power of the reformist elements in the C. G. T. during and after the World War. Through his own efforts Keufer had acquired a wide range of culture; a disciple of Auguste Comte in philosophical and social questions, he was until his death one of the most active members of the Société Positiviste de France. After resigning his office as secretary in 1920 he devoted himself to propaganda on behalf of the League of Nations.

GEORGES WEILL

*Consult:* Fédération du Livre, *Les deux méthodes syndicalistes* (Paris 1905), and *L'imprimerie française* for April 16, 1925; appreciations of Keufer by members of the Société Positiviste de France in *Revue positiviste* for 1924.

KEY, ELLEN (1849–1926), Swedish feminist. Ellen Key, the daughter of a prominent member of the Riksdag, passed her youth in a family environment imbued with cultural interests and

liberal ideas. At the age of thirty-one she began to teach and later to lecture in Stockholm on literature, art and social problems and early in her career became interested in a study of women's rights. Contemporary feminists were laying especial stress on woman's equality with man in all lines of activity and her right to equal rewards. Ellen Key deplored women's indiscriminate competition in what she considered men's work and expressed her creed that women are fitted primarily for motherhood. This apparent retrogression within the ranks brought upon her the bitter antagonism of the feminists. About 1900 she gave up all other work to devote her life to clarifying and spreading her views.

The achievement of equal educational economic and political opportunities for men and women was a necessary goal in Ellen Key's program but not its ultimate purpose. Woman must have opportunity for complete development both because of herself and because of her mission as mother. Monogamous marriage is the most desirable type of union, but love without marriage is preferable to marriage without love. Ellen Key's judicial, unabashed analysis of sex relationships and her fearless prescriptions for improvement resulted in the usual quota of popular calumny, but her principles were always recognized as idealistic. She was an important influence in modifying the nineteenth century hypocrisy and prudery toward sex, and throughout the western world her idealism was an inspiring stimulant to the cause of feminism. Many of her specific aims, such as motherhood insurance, adequate release from industry before and after childbirth, protection and respect for mother and child, either have already been accomplished or are much more possible of achievement than before her crusade.

Ellen Key was an ardent pacifist and worked in close sympathy with the labor movement. Her *Century of the Child*, in which she expressed her views on early training as a basis for future citizenship, established her also as an important influence in educational theory. She believed education to be a vital force in promoting a synthesis of individualism and solidarism.

FRIDA STEENHOFF

*Important works:* *Missbrukad kvinnokraft* (Stockholm 1896, 4th ed. 1914), tr. into German by T. Krüger as *Missbrauchte Frauenkraft* (4th ed. Munich 1911); *Tankebilder*, 2 vols. (Stockholm 1898, 3rd ed. 1922), tr. into German by F. Maro as *Essays* (7th ed. Berlin 1907); *Barnets århundrade*, 2 vols. (Stockholm 1901, 3rd ed. 1927), tr. as *The Century of the Child* (New York 1909); *Livslinjer*, 3 vols. (Stockholm 1903–06;

vol. i 3rd ed. 1923, vols. ii-iii 2nd ed. 1924-25), vol. i tr. by A. G. Chater as *Love and Marriage* (New York 1911); *Die Frauenbewegung* (Frankfort 1909), tr. by M. B. Borthwick as *The Woman Movement* (New York 1912); *En djupare syn på kriget* (A deeper view of the war) (Stockholm 1916).

*Consult:* Hamilton, Louise N., *Ellen Key: en livsbild* (2nd ed. Stockholm 1917), tr. into English by A. E. B. Fries (New York 1913); Landquist, John, *Ellen Key* (Stockholm 1909); *En bok om Ellen Key* (Stockholm 1919); Holmgren, A. M., *Ellen Key människovännen* (Ellen Key philanthropist) (Stockholm 1924); Lofgren, Mia Leche, *Ellen Key* (Stockholm 1930); Zimmermann, H., "Ellen Key, Sweden's Foremost Woman and Her Vogue in Germany" in *Putnam's Monthly*, vol. iii (1908) 432-39; Schoonmaker, N. M., "Ellen Key's Ideals of Love and Marriage" in *Current History*, vol. xxiv (1926) 529-32.

KEYSER, RUDOLF JAKOB (1803-64), Norwegian historian. Keyser was the first professor of Norwegian history and the Old Norse language at the University of Christiania (appointed in 1828) and the organizer of the university collection of antiquities, which he established on a truly scientific basis by the introduction of a chronological system. In his lectures he developed the new conception of Norwegian origins that became the shibboleth of the Norwegian historical school: the independent origin of the Norwegian nation and the exclusively Norwegian character of the Old Norse literature. His theory concerning the immigration of the Nordic race from the northeast, which was propounded in his program essay of 1839, and his ideas concerning the strength of popular tradition, which led him to the conclusion that the Eddic poems of the ninth century were an inheritance from far off days of national existence and that the sagas of the twelfth and thirteenth centuries contained accurate reproductions of tales going back to the ninth century, have not been able to stand the test of later criticism. But his main contention that the Eddic poems as well as the Icelandic sagas were composed in a language belonging exclusively to the Norwegian race, having neither common Scandinavian nor even pan-Teutonic origins, has proved a permanent contribution to knowledge and has been effective in strengthening the historical self-assertion of the Norwegian people.

As a historian Keyser was overshadowed by his brilliant pupil P. A. Munch. But it was Keyser who formed the firm historical system within which Munch accomplished his work, and of the two he was by far the greater systematizer. It is by virtue of this quality that his works are still valuable to the student. Although

most of his writings appeared in print only after his death in his *Efterladte skrifter* (3 vols., ed. by O. Rygh, Christiania 1866-67) and his *Samlede afhandlinger* (ed. by O. Rygh, Christiania 1868), when many of his theories were already antiquated, his careful collection and evaluation of material, the accuracy of his statements and his lucid presentation of the facts made his works useful and reliable, particularly with respect to the legal system of mediaeval Norway and daily life in old Norway and Iceland. While the scope of his work never extended beyond the national frontiers of Norway, thus excluding comparison with foreign history, he performed his task in an exemplary way and by his systematical thinking and teaching dominated historical thought in Norway for a full generation.

HALVDAN KOHT

*Consult:* Bugge, Alexander, in Oslo, Universitet, *Det kongelige Frederiks Universitet 1811-1911 festskrift*, 2 vols. (Christiania 1911) vol. ii, p. 224-34; Koht, Halvdan, in *Syn og segn*, vol. ix (1903) 5-13.

KHAMA (c. 1828-1923), South African native statesman. Khama was the last and most famous of the native chiefs who played an important role in the history of South Africa during the last century. Converted to Christianity in early manhood, he from the first took up an uncompromising stand against those customs of his people, the Bamangwato of Bechuanaland, which were repugnant to Christian ideas. When he became chief Khama enforced reforms with an unswerving resoluteness. His most notable achievement was the rigid prohibition of all liquor traffic within his territory. He abolished the official initiation rites for boys and girls and substituted Christian services for the traditional agricultural ceremonies. In his dealings with the Boer and British governments he proved himself a resourceful statesman. He successfully preserved his country at a difficult time from absorption into the South African Republic. Later by means of a visit to England he prevented the passing of Bechuanaland into the hands of the British South Africa Company, which he distrusted, and it became instead a protectorate directly under the British crown. He was able to secure the demarcation of his territory as a permanent native reserve and to keep certain rights of self-government; he also secured the maintenance of native law and custom in administration.

I. SCHAPERA

*Consult:* Mockford, J., *Khama, King of the Bamangwato* (London 1931).

KHMELNITSKY, BOHDAN (c. 1590-1657), Ukrainian national leader. Khmel'nitsky was the son of a country gentleman in the Ukraine. He studied in the Jesuit college at Yaroslav and spent several years as a war prisoner in Turkey. Upon his return to the Ukraine he served in the Cossack army then under the control of the Polish Republic. In 1646 he came in conflict with the new administration of the domain of Chihirin, his native town. His property was confiscated and his life endangered. Toward the end of 1647 he fled to the Niz (steppes along the lower Dnieper) and there with other persons out of sympathy with the Polish Republic he conceived the idea of an insurrection (*see* COS-SACKS). He was proclaimed hetman, gained the support of the khan of the Crimea and in the spring of 1648 the Cossack and Tartar troops fought the Polish army sent against Khmel'nitsky. At the same time all the Ukraine rose against the Polish nobles; those of the latter who had not time to flee perished and with them great numbers of the Jewish population, many of whom as the fiscal agents of the Polish landowners had aroused the hatred of the Ukrainian people. Khmel'nitsky was soon master of the Ukraine. At the outset of the revolution he had no other plans than to insure the rights and privileges of the Cossack army, and he sought to come to an agreement with the Polish government; it was not until 1649 that, under the influence of a group of clergy and savants at Kiev, he conceived the idea of setting up an independent Ukrainian state. The treason of the khan, who withdrew from the war, induced him to seek the protection of the czar in the treaty of 1654. Later, seeing that the czar aspired to the domination of the Ukraine, while the Ukrainian government sought only a military alliance, preserving the sovereignty of the Ukrainian state, Khmel'nitsky conceived the project of an alliance with Sweden and with the league of Protestant states headed by Cromwell. Sweden declared war on Poland in 1655 and the alliance of Sweden, Prussia, Transylvania and the Ukraine was formed in 1656. For Khmel'nitsky the goal of this war was the partition of Poland among the allies. All Ukrainian territory and the adjacent White Russian territory would be united under the aegis of the Cossack army and its hetman. The king of Sweden, however, abandoned the campaign; the projects of the allies were interrupted; and an opposition to the war against Poland made itself felt among the Cossack troops inspired by Muscovite emissaries

under the pretext that the czar had not given his consent to the projects of the league. The defeat of the campaign had completely disheartened Khmel'nitsky. Before his death he had chosen as hetman his son Yurko (George).

M. HRUŠEVSKY

*Consult:* Kostomarov, Nikolay, *Bogdan Khmel'nitsky*, 3 vols. (4th ed. St. Petersburg 1884); Hruševski, M., *Istoriya Ukrainy-Rusi*, vol. viii (2nd ed. Kiev 1922) pts. ii-iii, and vol. ix (Kiev 1928-31) pts. i-ii.

KHOMYAKOV, ALEXEY STEPANOVICH (1804-60), Russian Slavophile. Khomyakov, a wealthy landowner, was one of the most erudite and versatile men of his time. He dabbled in poetry and drama, studied and practised rational agronomy and agricultural management and engaged in endless polemics on philosophical, social and historical questions, in which he displayed amazing dialectic skill. His claim to historical significance rests upon his elaboration of the theological aspects of Slavophile doctrine. He postulated religion as the prime motive force in historical development and found accordingly two important types of religion: Cushitism based on the deification of natural necessity and Iranism worshiping the spirit as a free creative will. The purest form of Iranism is Christianity, of which the most genuine expression is the Eastern Orthodoxy free from the rationalism and materialism of the western churches. Khomyakov shared Kireyevsky's faith in the spiritual and historical mission of Russia because he considered its culture to be the least distorted outgrowth of Eastern Orthodoxy; he was critical, however, of many institutions both in pre-Petrine and post-Petrine Russia. Although he was a partisan of autocratic monarchy Khomyakov pleaded for the elimination of restrictions hampering free spiritual development and for the abolition of serfdom, which he regarded as unchristian. Together with Kireyevsky and Samarin he claimed for the peasants a right to the land they worked, basing it upon their original coownership with the landlords; he advocated therefore emancipation with moderate land allotments. In 1842 before Haxthausen discovered the Russian village community for the west Khomyakov developed the idea that the communal land regime was peculiar to the Slavs and particularly to the Russians, and he proposed to retain it even after emancipation as a safeguard against the extremes of concentration and parcellation of landed property. He accepted the peculiar Slavophile concept of *bit*—a complex of

freely developing normative customs as distinct from prescriptions enforced from the outside—but found the elements of *bit* predominant also in English civilization, whose essential conservatism he admired. He believed also that Anglicanism is nearer to Eastern Orthodoxy than either Roman Catholicism or Protestantism and strove for the union of the two churches.

SOLOMON KUZNETS

*Works:* The last collected edition in Russian is in 8 volumes (Moscow 1900–04); *L'Église latine et le protestantisme au point de vue de l'Église d'Orient* (Lau-sanne 1872).

*Consult:* Zavitnevich, V. Z., *Aleksey Stepanovich Khomyakov*, 2 vols. (Kiev 1902–13); Berdyayev, N. A., *Aleksey Stepanovich Khomyakov* (Moscow 1912); Masaryk, T. G., *Zur russischen Geschichts- und Religionsphilosophie*, 2 vols. (Jena 1913), tr by E. and C. Paul as *The Spirit of Russia* (London 1919) vol. i, ch. ix.

KHRIMIAN, MUGURDICH (1820–1907), Armenian national leader. Educated in his native town of Ván, Khrimian took orders as a monastic priest in 1854. Later he was appointed bishop and from 1869 to 1873 held office as patriarch at Constantinople. In 1878 he headed the delegation sent by Patriarch Nerses Varjabedian to the Congress of Berlin to plead for administrative reforms and was instrumental in obtaining the inclusion in the resulting treaty of the clause which pledged Europe to supervise reforms in Turkish Armenia. Armenian demonstrations upon Turkey's failure to fulfil its promises were answered by massacres. Khrimian was forced by Abdul-Hamid II to retire to Jerusalem in 1890 but in 1893 went to Echmiadzin in Russia as catholicos, or supreme head of the Armenian church, a position he occupied until his death.

Khrimian was one of the outstanding figures in the Armenian intellectual renaissance and was constantly active as teacher, writer and preacher. His main concern was for the welfare of the masses and their emancipation from their oppressors. In religion he was practical, tolerant and undogmatic. He foresaw an era of national activity, and in order that the Armenians might be educated and prepared for their responsibilities he established schools and introduced printing presses. In 1856 he began the publication of *Ardzvi* (Eagle) of Vasburagan, a periodical which sounded a distinct note of national awakening. Around this enterprise Khrimian gathered a group of disciples and collaborators who later took their places as leaders in the nationalist movement. His writings, which are all in Armenian and which include poetry, sermons

and essays, are, unlike other works of the period, entirely free from foreign influences and constitute a notable contribution to the national literature of Armenia.

V. M. KURKJIAN

*Consult:* Tchobanian, A., "L'apôtre de l'Arménie contemporaine: S. S. Mgrditch Khrumian" in *Mercure de France*, vol. lxiv (1906) 181–201; Macler, F., *Autour de l'Arménie* (Paris 1917) p. 240–47; "Khrumian and His Prophecy" in Khrumian, Metertich, *The Meeting of the Kings*, Armenian text and English translation by P. Tonapeteian and L. Binyon (London 1915) p. 3–9.

KIDD, BENJAMIN (1858–1916), English social philosopher. Kidd, who spent many years in British civil service as a clerk in the inland revenue office, later traveled widely investigating social and economic conditions. In 1898 he visited the United States and Canada and in 1902 South Africa. His social philosophy was a mixture of the antirationalistic strains of romanticist philosophy with the teachings of evolutionary biology. Human initiative and individual reason he believed to be disintegrative forces endangering the very existence of society. He envisaged group restraint, which he regarded as the main condition of social progress, in a mystical manner, discussing the subject with little insight into group or crowd psychology. He contended that since rationalism is individualistic and destructive the governing force in human and social development must be super-rational. This super-rational factor Kidd found to reside in religion, which furnishes the "ultra-rational sanction" for those modes of conduct most conducive to progress. In *The Science of Power* (posthumously published, New York 1918) Kidd further identified religion with the search for the ideal. In his *Social Evolution* (New York 1894, rev. ed. 1920) and his *Principles of Western Civilization* (New York 1902) he appealed to history to justify his conception of social causation and of progress; the result was a man-handling and juggling of historical facts.

Kidd's social theories had a considerable vogue at the turn of the century notwithstanding their meager value as science and logic, because they appealed to the large body of laymen who wished to reconcile religion and evolution. They were not well received by biologists, however, who resented his emphasis on religion and his denial of the value of reason, or by the pious, who were shocked by his characterization of religion as irrational. His *Control of the Tropics* (New York 1898), which realistically emphasized the importance of the tropics and of imperialism

for the future of western civilization, had a considerable effect on the imperialistic policies of Joseph Chamberlain and others.

HARRY E. BARNES

*Consult:* Barnes, H. E., "Benjamin Kidd and the Super-rational Basis of Social and Political Processes" in *American Journal of Sociology*, vol. xxvii (1921-22) 581-87; Giddings, F. H., Introduction to Kidd's *The Science of Power* (New York 1918); Mackintosh, R., *From Comte to Benjamin Kidd* (New York 1899); Kovalevsky, M., *Sovremennii sotsiologii* (Contemporary sociologists) (St. Petersburg 1905) p. 210-22; Sprague, F. M., *The Laws of Social Evolution* (Boston 1895); Bristol, L. M., *Social Adaptation* (Cambridge, Mass. 1915) p. 85-92.

KIDERLEN-WÄCHTER, ALFRED VON (1852-1912), German diplomat and statesman. At the outset of his diplomatic career Kiderlen-Wächter enjoyed the favor of Bismarck and of William II; but because of his tendencies to unguarded criticism he was removed for a time to minor posts, until under the pressure of diplomatic crisis his services became indispensable. Bulow appointed him acting ambassador to Constantinople during the Young Turk Revolution in 1908 and shortly afterward acting secretary of state of the Foreign Office during the Austro-Russian crisis provoked by Austria's annexation of Bosnia. By urging on Vienna a policy of moderation he succeeded in preventing a diplomatic rupture between Germany's ally and Turkey. In 1910, at the insistence of Bethmann-Hollweg, Kiderlen-Wächter was appointed by the kaiser secretary of state of the Foreign Office. During his two years as trusted adviser to the chancellor he set out to reverse Bülow's policy of subservience to Austria and by emphasizing the independence of German interests and the peculiarity of German needs to make his country the dominant force in the Austro-German alliance. Pursuing a policy similar to that which he had followed in 1908 he met the Austro-Serbian crisis of 1912 with a strong recommendation to Bethmann-Hollweg that the Austro-Hungarian government be made aware, amicably but unequivocally, that Germany was no longer disposed to rubber stamp her ally's actions in the Balkans or the Orient. If Austria wished to insure the continuance of the alliance she must accustom herself to submitting in advance her intended course of action so as to allow Germany opportunity to review it objectively in the light of the particular elements involved. In his efforts to bring about an agreement between Austria and Russia he not only cooperated with Poincaré with a view to French mediation but

conceived the idea, for which Grey was allowed to receive the credit, of establishing the permanent London Conference of the Ambassadors of the Great Powers. Nor did he hesitate, in his eagerness to bring to an end what he considered the aberrations of Vienna's foreign policy, to issue a semi-official statement so direct and outspoken that it brought a protest from Franz Ferdinand, heir to the Austrian throne. This unwavering directness of Kiderlen-Wächter in dealing with the Balkan crisis of 1908 and 1912 has led a number of historians to insist that the "Swabian Bismarck" would have been equally successful in the not dissimilar situation of July, 1914. He was likewise eager to halt Germany's growing isolation by forwarding in opposition to Tirpitz an Anglo-German understanding and by renouncing, as an initial pledge of good will to France, Germany's ambitions in Morocco.

ERNST JÄCKH

*Consult:* Kiderlen-Wächter, *der Staatsmann und Mensch: Briefwechsel und Nachlass*, ed. by Ernst Jäckh, 2 vols. (Stuttgart 1924), tr. into French by Henri Simonet with introduction, 1 vol. (Paris 1926); Andreas, Willy, "Kiderlen-Wächter, Randglossen zu seinem Nachlass" in *Historische Zeitschrift*, vol. cxxxi (1925) 247-76.

KIDO, TAKAYOSHI (1834-77), Japanese statesman. Kido is known as one of the Ishin-Sanketsu, or "three great men," of the restoration, the other two being Toshimichi Okubo and Takamori Saigo. Kido was the son of a physician in the feudal fief of Choshu and he distinguished himself at an early age as a scholar of the Chinese and Japanese classics. The national upheaval caused by the arrival of Commodore Perry and other foreign emissaries demanding trade and intercourse convinced Kido that the shogunate, the military magistracy which had held sway for seven centuries, must be abolished and that the nation must unite under the emperor. This view was heartily endorsed by his feudal chief, the lord of Choshu. As the first step toward accomplishing the task of restoring the imperial regime Kido brought about an entente between the Choshu fief and Satsuma, or Sassi, another powerful fief in the south of Japan. The restoration of 1868 was largely the work of these two fiefs and thus the new government was for many years dominated by the Sassi-Choshu combination. In the new imperial government Kido as well as Saigo and Okubo, both of Sassi, was appointed adviser to the *soaikioku*, the prototype of the later cabinet. Kido's most important work is connected with the abolition

of feudalism. He persuaded the lord of Choshu to surrender his fief to the emperor and this example was immediately followed by Sassi, Tosa and Hizen, resulting in 1871 in the replacement of feudal provinces by prefectures under direct control of the central government. In September of the same year, while he was minister of home affairs, Kido, as a member of the mission headed by Prince Iwakura and including Okubo and Ito, went abroad to find out whether the western powers would agree to the revision of the unequal treaties. The mission returned home in the autumn of 1873 just in time to frustrate the plan to send a punitive expedition against Korea, an action which had been vigorously urged by a powerful group of high officials led by Saigo and Itagaki. After his return from abroad Kido served as home minister and minister of education. He founded the first regular newspaper in the country and was in many ways active in the introduction of western culture into Japan.

KIYOSHI K. KAWAKAMI

*Consult: Dai Nihon Jinmei Jisho* (Dictionary of Japanese biographies), 3 vols. (2nd rev. ed. Tokyo 1926) vol. i, p. 839-43; Takekoshi, Yosaburo, *Shin Nihon Shi* (History of New Japan) (Tokyo 1895); Morris, J., *Makers of Modern Japan* (London 1906) ch. xvii.

KINDERGARTEN. *See* PRESCHOOL EDUCATION.

KING, GREGORY (1648-1712), English statistician. King was clerk to Sir William Dugdale, the famous antiquary, under whose instruction he laid the foundations of his extensive knowledge of heraldry and genealogy. Later he assisted John Ogilby, the printer, in the production of the well known *Itinerarium Angliae: or, a Book of the Roads* (1675). He was appointed registrar of the College of Arms in 1684 and subsequently Lancaster herald. His work on local genealogy and topography together with his bent toward mathematics suggested to him the possibility of expressing social data statistically. In *Natural and Political Observations and Conclusions upon the State and Condition of England 1696* he set out his deductions. This treatise was known to his contemporaries and throughout the eighteenth century (to Adam Smith among others) from the sections printed by Charles Davenant in his *Essay upon the Probable Methods of Making a People Gainers in the Ballance of Trade* (London 1699, 2nd ed. 1700). George Chalmers added it to the 1802 edition of his *Estimate of the Comparative Strength of Great Britain* and later published it separately prefaced

by a life of King (London 1804, new ed. 1810).

In estimating the population for the year 1696 King took as a basis the returns from the hearth tax in 1690. After making certain corrections and allowing for an increase of houses at the corrected rate of a thousand a year he arrived at a total of approximately 1,300,000 inhabited houses. He then proceeded to work out a multiplier which would give the average number in a house—a number which he apparently identified with the number in the average family. From the recent assessments levied on births, marriages and burials he calculated that the average varied between 5.5 in London and 4 in villages and hamlets. His ultimate result was a total population of 5,500,000. This is a considerably lower total than that arrived at by Petty, Davenant and Barbon; but statistical estimates made after the introduction of the decennial census in 1801, for example that of Rickman, tend to confirm King's more conservative figure. He estimated the proportion of males to females, the number in each social class and their average income. His calculation of the effect of a decrease in the harvest of corn on the price of corn attracted considerable attention. His figures for the proportion of cultivated to waste land, for the annual amount and value of cereal production and of the wool clip and woolen manufacture, although necessarily based on meager information, are generally accepted as a rough approximation to the facts. King often made pure guesses, but he did so as a careful and disinterested observer. His work is therefore crude from a modern point of view, but it represents an advance over that of his predecessors, for example Sir William Petty, and compares favorably with that of the eighteenth century writers on population, whose work was usually inspired by a polemical purpose.

King's manuscript autobiography (in the Rawlinson collection in the Bodleian library, Oxford) has been printed in James Dallaway's *Inquiries into the Origin . . . of the Science of Heraldry in England* (Gloucester 1793) as appendix ix.

J. F. REES

KING, LEONARD WILLIAM (1869-1919), British Assyriologist. King, who was born in London and educated at Rugby and King's College, Cambridge, spent the remainder of his life as assistant and assistant keeper in the Department of Egyptian and Assyrian Antiquities at the British Museum. He is best known for his *History of Sumer and Akkad* (London 1910) and



his *History of Babylon* (London 1915), of which Rogers gave a fair estimate when he said: "They are immensely learned, rich in citations from the original sources, a storehouse of acute, ingenious, and suggestive observations," but "something less than history as Gibbon would have written it." His importance to the student of the social sciences, however, is to be sought in his other works. In 1896 he began the publication of the *Cuneiform Texts from Babylonian Tablets . . . in the British Museum*, sixteen volumes of which were his own work. The texts published covered every department of knowledge—historical annals, building inscriptions, grammatical texts, hymns, prayers, omens, incantations, epics, myths and above all huge numbers of economic documents. Many of these were published also with translation and commentary. With E. A. W. Budge he edited *Annals of the Kings of Assyria* (London 1902), long the fundamental source for earlier Assyrian history, and with R. C. Thompson *The Sculptures and Inscriptions of Darius the Great on the Rock of Behistān in Persia* (London 1907), a similar work in the field of Persian history. In *The Seven Tablets of Creation* (2 vols., London 1902) was contained the important creation story which is believed to have influenced the Hebrew account of the creation in Genesis. The *Letters and Inscriptions of Hammurabi* (3 vols., London 1898–1900) showed the Babylonian administrative machine actually at work and illuminated the culture. For the student of the social sciences perhaps the most important of King's editions was his *Babylonian Boundary-stones and Memorial-tablets in the British Museum* (London 1912). The documents in this volume are in reality charters by which weakening kings granted to nobles growing in power exemptions from the usual dues and services; they portray in a striking manner a situation parallel to that in mediaeval Europe—a recent feudal system imposed upon an age old manorial system. Although King himself did little to synthesize the results of his researches, his publications were of service to subsequent social scientists.

A. T. OLMSTEAD

Consult: Rogers, Robert William, in *American Journal of Semitic Languages and Literatures*, vol. xxxvi (1919–20) 89–94; Olmstead, A. T., "A History of Babylon" in *American Journal of Theology*, vol. xx (1916) 277–86.

KING, WILLIAM (1786–1865), English co-operator. King, the son of a clergyman, became a physician with a strong interest in the social

reform movements of his day. In 1822 he settled in Brighton, where he became distinguished as an assistant of Mrs. Elizabeth Fry, the philanthropist and prison reformer, and as a supporter of infant schools and mechanics' institutes, at which he frequently lectured.

From 1827 to 1830 King was active in the co-operative movement. He encouraged the Brighton workers to experiment in cooperation and in 1828 issued the *Co-operator*, a monthly magazine financed and written mainly by himself, which was the first to advocate cooperation in language understood by the working class. During the two years of the *Co-operator* King not only stimulated immensely the formation of cooperative societies (three hundred according to his own estimate) but developed a theory of cooperation which has earned him recognition as the first great theorist of modern cooperation. He rejected the philanthropic cooperation of Robert Owen, whose proposals required large capital, which could be secured only from the rich and powerful, and appealed directly to workers to organize cooperatives by utilizing their own economic power and accumulating their own capital. Cooperatives were to pay no individual dividends but to place all profits in a reserve fund for the common good and for purposes of expansion. He advocated producers' cooperatives as a means by which the workers could secure the full product of their labor. While King had no objection to self-sustaining cooperative communities providing they were organized with the cooperators' own accumulated capital he stressed the formation of consumers' and producers' cooperatives within the old society to serve not only the members but the general public as well. The workers could thus gradually dispossess the capitalist class. King ceased publication of the *Co-operator* in August, 1830, owing to dissensions in the cooperative movement over forms and purposes and devoted his later life to philanthropy and reform. His ideas influenced the Rochdale Pioneers and the subsequent development of the cooperative movement; many cooperators feel that King deserves to be called the father of modern co-operation.

R. W. POSTGATE

Consult: Dent, J. J., *The Co-operative Ideals of Dr. William King* (Manchester 1921); Mercer, T. W., *Dr. William King and "The Co-operator," 1828–1830* (Manchester 1922); Muller, Hans, "Zweck und Wesen der Genossenschaft, nach Dr. W. King" in *Anthologie des Genossenschaftswesens*, compiled by V. Totomianz (Berlin 1922) p. 18–26.

KING, WILLIAM ALEXANDER (1855-1906), American vital statistician. King first became associated with census work in 1880 and after 1900 was the first chief statistician for vital statistics of the federal Census Bureau. His pioneering activities in this field of government reporting were of particular significance with regard to the collection and treatment of mortality figures, and the lines of development which he laid out are being followed closely today. King made an important contribution in drawing up the standard death certificate, the general use of which in the registration area permitted the collection of uniform basic data on the age, nativity, parentage, marital status and cause of death of decedents. Under his direction the division of vital statistics also adopted the International Classification of Causes of Death. This made possible the statistical presentation under a comparatively small group of clearly defined titles of what had been a vast number of unsatisfactory medical terms and allowed for the comparison of American with foreign mortality experience. At his urging Congress passed in February, 1903, a joint resolution calling on state authorities to cooperate with the Census Bureau in securing a uniform system of birth and death registrations. This was the first important federal recognition of the value of vital statistics as essential to the progress of medicine and sanitary science. King played an important part also in drafting the model law for vital statistics, which a state or municipality was required to adopt before it could be admitted to the federal death registration area. His labors in perfecting the methodology of the vital statistics division, particularly in devising a remarkable system of checks and cross checks, paved the way for the excellent annual mortality reports published since 1900 by the Census Bureau.

GEORGE H. VAN BUREN

Consult: Van Buren, G. H., "William Alexander King and the Federal Registration Service 1900-1906" in American Statistical Association, *Journal*, vol. xxi (1926) 267-72.

KINGSHIP. See MONARCHY.

KINGSLEY, CHARLES (1819-75), English clergyman and social reformer. Kingsley played an active part in the brief life of the Christian Socialist movement in the years following 1848. He was greatly inspired by F. D. Maurice and, like the rest of the group surrounding Maurice, he was deeply excited by the Chartist movement

in Great Britain and the Revolution of 1848 in France. Chartism, however, seemed to him to be on the wrong lines because it was not based on religion and because it was mainly political; he felt that social reform should come through individual regeneration and group cooperation. The attempt of Louis Blanc and others in Paris to create self-governing workshops roused the enthusiasm of Maurice's circle, and the result was the founding of the Christian Socialist movement with the object of establishing cooperative workshops in Great Britain. To the first organ of the Christian Socialists, *Politics for the People* (published from May to July, 1848), Kingsley contributed trenchant articles under the signature "Parson Lot"; in the years 1850 and 1851 he also wrote many articles for the *Christian Socialist*. During the same period he published two novels, *Yeast* (1848) and *Alton Locke* (1850), describing the evil conditions of working class life. His pamphlet *Cheap Clothes and Nasty* (1850), exposing the sweating system, had a wide influence. After the failure of the Christian Socialist movement, however, he dropped out of politics and his views gradually came to be far less radical, although he retained to the end a keen interest in popular education and the development of public health and sanitation.

From 1860 to 1869 Kingsley was professor of modern history at Cambridge, but he was a graphic lecturer rather than an exact scholar and was not regarded as a success. Most of his time was spent at Eversley, where he was rector from 1844 to the end of his life. Besides his political and social works he wrote several novels, notably *Ilypatia* (2 vols., 1853) and *Westward Ho!* (3 vols., 1855), children's books and some poetry; and he published many volumes of sermons and essays. He was a vigorous but unskilful controversialist and got much the worst of a tussle with Cardinal Newman. Kingsley's political and economic views were less the result of thought than of strong reaction against evil conditions and of enthusiasm generated by his friendship with Ludlow and Maurice. He was always a social reformer rather than a socialist and had in many respects stronger affinities to Toryism than to the radicalism of his day. His contact with the working class movement through Christian Socialism was indeed only an episode in his energetic and varied life as clergyman, novelist, poet, historian, naturalist, educator and "muscular Christian."

G. D. H. COLE

Works: *Works*, 28 vols. (London 1884-85).

Consult: Charles Kingsley: *Letters and Memories of His*

*Life*, ed. by his wife, 2 vols. (London 1877-80); Brown, W. Henry, *Charles Kingsley, the Work and Influence of Parson Lot* (Manchester, Eng. 1924); Stubbs, C. W., *Charles Kingsley and the Christian Social Movement* (London 1899); Kaufmann, Moritz, *Charles Kingsley: Christian Socialist and Social Reformer* (London 1892); Vulliamy, C. E., *Charles Kingsley and Christian Socialism*, Fabian Tracts, no. 174 (London 1914); Brunner, Karl, "Charles Kingsley als christlich sozialer Dichter" in *Anglia*, vol. xlvii (1922) 289-322, and vol. xlviii (1922) 1-33; Raven, C. E., *Christian Socialism 1848-1854* (London 1920) p. 93-101, 166-81; Seligman, E. R. A., "Owen and the Christian Socialists" in his *Essays in Economics* (New York 1925) p. 33-62.

KINGSTON, CHARLES CAMERON (1850-1908), Australian statesman. Kingston began his political career in the South Australian parliament in 1881 as a believer in comprehensive state intervention for social betterment. He was largely responsible for the introduction of woman suffrage, payment of members of parliament, a state bank, progressive land and income taxes, factory regulation, employer's liability and restriction of Chinese immigration. He also fathered the principles of compulsory conciliation and arbitration in labor disputes. The disastrous maritime strike of 1890 convinced him that such "barbarous expedients" should be forbidden, for from them right does not necessarily emerge triumphant. The state must protect non-combatants, who suffer severely, and must attempt to explore what Judge Higgins later called a "new province for law and order." His bill of 1890, by which employers' and employees' organizations could if they wished consent to submit all future disputes to conciliation or arbitration, while the state was to have power of compulsion if necessary, was not passed until 1894 and was never used; but it inspired W. Pember Reeves to similar action in New Zealand, where the first compulsory arbitration act in any country was enacted in 1894. Kingston was a strong advocate of Australian federation. He played a leading part in the drafting of the federal constitution: he was prominent among those who worked out the first draft of a constitution in 1891; he presided over the convention of 1897-98, the work of which was influenced by the preliminary draft; and he participated in the premiers' conference which gave final shape to the constitution. The grant of federal jurisdiction over industrial disputes of an interstate character was originally proposed by him. From 1901 to 1903, when he was the first federal minister of trade and customs, Kingston prepared the first tariff. He also inaugurated a system of

bounties, which, however, was restricted to sugar until 1907.

HERBERT HEATON

*Consult:* Coghlan, T. A., *Labour and Industry in Australia*, 4 vols. (London 1918) vol. iv, p. 1916-29, 2090-91, 2100-03, 2272-2305; Hunt, E. M., *American Precedents in Australian Federation* (New York 1930); Turner, Henry Gyles, *The First Decade of the Australian Commonwealth* (Melbourne 1911).

KINSHIP. English terms of relationship show diverse principles of nomenclature as to both form and meaning. Formally father and mother are irreducible parts of speech. But such terms as father-in-law and mother-in-law are compounds derived from the rules of canon law as to prohibited degrees, while grandfather and great uncle are formed by adjectival modification of the primary noun. Although in English denotative terms are either primary or derivative, Scandinavian tongues use descriptive as well as denotative terms by describing certain relationships by juxtaposition of the primary relationship terms. Thus the uncle relationship is expressed in the Swedish language by two terms, *farbror*, meaning father's brother, and *morbror*, meaning mother's brother.

English terms also differ in range of application. Father and mother unequivocally designate single persons; but brother or sister may apply to a number of individuals, and cousin has a still wider range. In other words, some terms individualize, other terms embrace a smaller or larger class of persons and they are thus classificatory.

Systems of kinship nomenclature differ in the principles of classification employed and in the relative frequency of principles common to them. Kroeber's investigation in 1909 resulted in a list of categories discoverable from North American data. Kroeber found that kindred are grouped, for example, according to generation or age level as well as to differences between direct and collateral lines of descent. Lexical distinctions might depend on the speaker's sex or on the sex of the relative intermediary between interlocutors. Kroeber argued that such changes and groupings did not reflect social usage but were molded by the psychological factors operative in language generally. This was in avowed revolt against the current view that kinship systems were correlates of social institutions, a principle which was introduced by Lewis Henry Morgan in 1868.

The sociological interpretation of kinship terms antedated the linguistic because anthro-

pologists have been interested primarily in cultural phenomena rather than in linguistic history. Terms of relationship are first of all vocables and what holds for language must ipso facto hold for them; their linguistic history does not differ from that of other words. In Dickens and Thackeray a mother-in-law is sometimes a stepmother, not a spouse's mother; the subsequent restriction in meaning has nothing to do with a change in the social position of stepmothers or spouses' mothers. The change is comparable to the modern restriction in the meaning of the word monogamy as compared with the eighteenth century usage as revealed in *The Vicar of Wakefield*. The French word *tante* was substituted for *Muhme* in the German language and assimilated to native phonetics; the process of borrowing with modification was in no sense distinctive of kinship terms and bore no relation to changes in the German attitude toward aunts. The indifference of the anthropologists to these patent facts of linguistic history has not been due to caprice or perversity. Except in so far as he is avowedly a linguist the social scientist has nothing to do with phenomena of this order, which do not interest him professionally and which he has no special technique for interpreting. As well might an ethnographer try to explain why in some languages nouns for long objects require certain definite articles, nouns for round objects others; or why in color vocabularies dark blue is sometimes classed with black and light blue with green. Anthropological field workers and armchair theorists have grappled with kinship systems solely because these were felt to be correlated with social facts. Sociological interpretations leave a residuum of facts unexplained, however, which are data for philological and psychological scrutiny.

Unhampered by the need for considering all the vagaries of linguistic growth, ethnologists have been able to develop a relatively simple classification of systems. In most European languages individualizing terms for parents occur; and, correlatively, parents apply the term for child only to their own offspring, while siblings differentiate themselves from cousins. The immediate family group is thus sharply differentiated from remote kinsfolk, an emphasis which warrants the term lineal as defining systems that segregate the lineal kin from collateral relatives, who are lumped together as uncles and aunts or cousins. Collateral systems, on the other hand, distinguish not only the collateral from lineal kindred but, at least partly, the maternal from

the paternal collaterals. The Eskimo, the Mono of California and to some extent the Scandinavian languages illustrate these features. A great many peoples, among them the Australians, the Ojibwa and the Iroquois, not only bifurcate collaterals but identify with a parent his sibling of the same sex. Thus there is one term for father and father's brother and another for mother's brother; there is one term for mother and mother's sister and a distinct term for father's sister. By logical correlation tribes using such nomenclatures, which may be designated as collateral merging systems, recognize as siblings the offspring of the paternal uncle or maternal aunt while putting other cousins into a separate category. Generation systems such as those of Polynesia and Micronesia merge all members of the same generation and the same sex under one term.

Morgan and his disciples ignored the existence of all primitive kinship systems except those of the generation and the collateral merging type and thus came to postulate a sharp contrast between primitive and civilized nomenclature and social institutions. Specifically Morgan regarded the generation system of the Polynesians as the simplest of all and accordingly the most ancient. He could conceive only one reason for classing together the father and uncles of both types; namely, that when the terminology originated a man mated with his brother's wife and with his own sister, so that from the children's point of view an uncle was a potential father. Restrictions on the mating of siblings, Morgan contended, crystallized in what is here called a collateral merging system, where the merging of paternal uncle and father meant that a brother still had access to his brother's wife although no longer to his own sister. Monogamy, he believed, evolved ultimately together with the individualizing parent terms of modern terminology. Some of the rudest peoples, however, are monogamous and their kinship terminologies approximate modern European kinship terms. On the other hand, the Polynesians are far from the nascent stages of human society, and their generation system is almost certainly the result of secondary simplification. Similar simplification of terminology has also been noted in Siberia by Sternberg and in America by Lowie. The collateral merging type is evidently consonant with a clan organization, since it links persons of the same clan and separates persons separated by the exogamous rule. If a clan system weakened, the differentiation, for example, between mother's

brother and father's brother might cease to be significant and in extreme cases a generation system might develop, as was shown by Rivers. Morgan was wrong, however, in assuming that the term father in the aboriginal languages necessarily implied procreation. The term merely denotes similarity of status with one's father; many peoples in fact are indifferent to biological paternity. Morgan's specific sociological interpretations were therefore at fault; nevertheless, his intuition that some sort of sociological correlation is involved remains unscotched.

This is in a measure a matter of direct observation. In Australia the studies of Radcliffe-Brown and of Warner have shown that every member of a group stands to every other in a fixed relationship expressed by a pair of kinship terms and correlated with fixed behavior patterns. If a man calls a woman by a certain cousin term, it means that she is a potential wife. The fact that Australians have no terms of affinity is a consequence of their marriage rules, by which every individual must marry a blood relative of some specific class. Apart from such overt instances the moot problem of sociological correlation can be settled by crucial tests based on the logic of varying concomitants. The linguist's challenge is that "the infinitely variable play of the variable factors forbids any true determinations of causality of a sweeping character." If this held true, tribes with or without clans, with maternal or paternal descent, practising or forbidding cross cousin marriage, would have on the average similar systems.

The evidence, however, demonstrates a functional relationship in a mathematical sense between clan organization and collateral merging systems. Collateral merging systems are conspicuously distributed in North America throughout the area of clan organization, with occasional extensions into contiguous tribes. On the other hand, among the Eskimo, around Puget Sound and the Columbia River, in northern California and the Great Basin, that is, among the clanless aborigines, the lineal and collateral nomenclatures hold sway. It cannot be mere chance that those tribes recognizing the family as the foremost social unit are also the ones that stress the immediate kin and segregate them from more remote relatives. On the northwest coast the Kwakiutl have no clear cut clan organization, while other tribes of the same culture area—the Tlinkit, Haida and Tsimshian—have clans; the latter have the collateral merging terminology and the Kwakiutl lack it. Of all the Shoshoneans

the Hopi have the best developed clan organization, and they alone have a typical collateral merging nomenclature. Outside of America the Andamanese, Chukchi and Koryak are clanless and their kinship terms show no trace of collateral merging systems, which are regularly linked with the clan organizations of Australians and African Negroes.

But the phenomena are too complex to warrant the establishment of a simple causal nexus. The alignment characteristic of collateral merging would also result from the combined effect of two widespread forms of marriage, the levirate and sororal polygyny. When a man regularly inherits his brother's widow and takes to wife his first spouse's younger sisters, father's brothers are equated with the father and the mother's sisters with the mother. Since as a rule the tribes with clans also practise these marriage forms, one can merely indicate that an empirical multiple correlation exists without inferring a cause and effect relationship with either the marriage forms or the clan organization.

A special case is presented by that form of clan organization known as the exogamous moiety system. Primitive peoples frequently dichotomize cousins: only cross cousins or the children of a brother and of a sister are distinguished by a cousin term, while parallel cousins, the children of two brothers or of two sisters, fall into the category of siblings. This phenomenon is often linked with the custom of prescribing marriage with cross cousins and tabuing unions of parallel cousins. Tylor showed that this grouping follows from a division into exogamous moieties, where, whether descent is paternal or maternal, cross cousins always are in complementary moieties. On the other hand, the addition of a third exogamous clan no longer inevitably groups cousins in this fashion. The theory fits the cousin classification but is not yet borne out by the empirical data, since the terminology also appears in many tribes lacking exogamous moieties.

Cross cousin marriage, as Rivers showed for Melanesia, is correlated with specific modifications of collateral merging nomenclatures. In cases where the man's maternal uncle and his father-in-law, his mother-in-law and his mother's brother's wife are identified, where he calls wife and female cross cousin by a single word and classes brothers-in-law with male cross cousins, a study of the nomenclature seems sufficient to prove a correlation. Moreover the totality of these equations does not seem to occur

except in regions where the marriage form occurs.

Among the Omaha of Nebraska the generation lines are overridden—a mother's brother's son is called by the same term as a maternal uncle. This feature is not shared by such fellow Siouans as the Crow or Dakota, but occurs among several Central Algonquian tribes. Since, however, these tribes are neighbors, the peculiarity might be explained through diffusion without recourse to social phenomena. But when the same terminological feature crops up two thousand miles to the west among the Miwok of California as well as in Africa and Asia, one must either fall back on the caprices of language, that is, abandon explanation, or look for a common determinant. The latter is found in the common stressing of the paternal line, for all the tribes in question have paternal clans and by paternal descent a maternal uncle and his son will always be in the same clan. For the Miwok and Omaha parallels a perfect answer can be given; both permit a man to marry his wife's brother's daughter—the niece is thus elevated in status, becoming a mother to the offspring of her husband's first marriage, whence her brother becomes a mother's brother. Yet the theory is not adequate; there are tribes like the Ojibwa which are also patrilineal but fail to disregard generation lines.

The reverse occurs in Melanesia, in southern Alaska, among the Crow of Montana, the Pawnee of Nebraska, the Hopi of Arizona and in southeastern United States, where the paternal aunt's son is reckoned a father and her daughter a paternal aunt. All these tribes are matrilineal, so that the father's sister and her children are always in the same group as herself and her brother. But here too a supplementary hypothesis is required, for there are matrilineal tribes, such as the Iroquois, that do not override generations. For the Melanesian and Tlinkit tribes, at least, nepotic inheritance of widows provides the key: a man inherits his mother's brother's widow, hence her children by the first husband call their cousin father. In Dobu, Melanesia, as Fortune has shown, the father's sister's son is verbally identified with the father only after the latter's death; Malinowski found that in the nearby Trobriands the classification obtains from birth. The steps of the development are therefore clear in this area.

Lesser is correct in conceiving such marriage forms as extensions of the sororate and levirate respectively. Where the simple sororate and levirate hold, collateral merging systems adhere

to the generation principle tempered with merging; in cases of extended sororate and levirate the generation principle is correspondingly suspended. The extensions are themselves in consonance with rules of descent; it is not the matrilineal Dobu but the patrilineal Omaha who permit the supplementary wife to come from her predecessor's paternal lineage. In other words, the nomenclature is linked by multiple correlation with a rule of marriage and a rule of descent, which are functions of each other. Furthermore it cannot be inferred that nepotic inheritance of the widow accounts for all the matrilineal cases, since other social factors might yield similar results. Thus if, as in some tribes, a man may marry his wife's daughter by a previous union, a son by the older woman will through the common father be a brother to a son by the younger wife. He is, however, the latter boy's mother's mother's son; that is, a mother's brother. Hence the brother is equated with the mother's brother, so that brother's son becomes the mother's brother's son. Since in collateral merging systems a man's brother's son is designated by the same terms as a son, the son is equated with the mother's brother's son; whence by inversion of the relationship the father becomes the father's sister's son. There is danger therefore of inferring that a particular social factor is the determining principle when some other factor is able to produce like terminological effects, but this does not militate against the theory of sociological determinism.

The empirical correlations found in Australia are convincing. Radcliffe-Brown discovered that wherever the designations of the mother's mother's brother and the father's father coincided, the tribes practised cross cousin marriage and were segmented into four sections; where these relatives were distinguished, marriage was with a cousin of more remote degree—the mother's mother's brother's daughter's daughter—and there were eight sections.

In summary, kinship terminologies cannot be wholly interpreted along sociological principles because of the whimsicalities of linguistic usage. Diffusion may likewise prove a distorting agency; it is conceivable that special features may sometimes be borrowed independently of existing social phenomena, even if one admits that frequently traits of nomenclature are borrowed that are congruous with the existing social scheme, as Thurnwald contends. Apart from phenomena which are at present inexplicable, it must be recognized that coexisting social factors may

compete in the shaping of a given system and that generally insight into the relative importance and chronology of these factors is lacking. Notwithstanding such difficulties clear cut empirical correlations between kinship terms and social organization appear; in fact no other branch of culture so definitely illustrates two principles of major theoretical significance: the occurrence of regularities and the possibility of convergence.

ROBERT H. LOWIE

See: SOCIAL ORGANIZATION; FAMILY; MARRIAGE; INTERMARRIAGE; INCEST; ADOPTION; ANTHROPOLOGY; CULTURE; EVOLUTION, SOCIAL.

Consult: Morgan, Lewis Henry, "A Conjectural Solution of the Origin of the Classificatory System of Relationship" in *American Academy of Arts and Sciences, Proceedings*, vol. vii (1865-68) 436-77, and *Systems of Consanguinity and Affinity of the Human Family*, Smithsonian Contributions to Knowledge, vol. xvii (Washington 1870) no. 2, and *Ancient Society; or Researches in the Lines of Human Progress from Savagery through Barbarism to Civilization* (New York 1877); Kroeber, A. L., "Classificatory Systems of Relationship" in *Royal Anthropological Institute of Great Britain and Ireland, Journal*, vol. xxxix (1909) 77-84; Sternberg, Leo, "The Turano-Ganowanian System and the Nations of North-east Asia" in *International Congress of Americanists, Proceedings*, vol. xviii (London 1913) p. 319-33; Lowie, Robert H., "Historical and Sociological Interpretation of Kinship Terminologies" in *Holmes Anniversary Volume* (Washington 1916) p. 293-300, "A Note on Relationship Terminologies" in *American Anthropologist*, n.s., vol. xxx (1928) 263-67, and *Primitive Society* (New York 1920); Rivers, W. H. R., "On the Origin of the Classificatory System of Relationships" in *Anthropological Essays Presented to E. B. Tylor* (Oxford 1907) p. 309-23, *Kinship and Social Organisation*, London School of Economics, Studies in Economics and Political Science, no. xxxvi (London 1914), and *Social Organisation*, ed. by W. J. Perry, History of Civilization series (London 1924); Tylor, E. B., "On a Method of Investigating the Development of Institutions" in *Royal Anthropological Institute of Great Britain and Ireland, Journal*, vol. xviii (1889) 245-72; Gifford, E. W., *Californian Kinship Terminologies*, University of California, Publication in American Archaeology and Ethnology, vol. xviii (Berkeley 1922); Spier, Leslie, "The Distribution of Kinship Systems in North America" in *University of Washington, Publications in Anthropology*, vol. i (Seattle 1925) p. 71-88; Radcliffe-Brown, A. R., "The Social Organization of Australian Tribes" in *Oceania*, vol. i (1930-31) 34-63, 206-46, 322-41 and 426-56; Warner, W. L., "Morphology and Functions of the Australian Murngin Type of Kinship" in *American Anthropologist*, n.s., vol. xxxii (1930) 207-56; Durlach, T. M., "The Relationship Systems of the Tlingit, Haida and Tsimshian," *American Ethnological Society, Publications*, vol. xi (New York 1928); Fortune, R. F., *Sorcerers of Dobu* (London 1932) ch. i; Malinowski, Bronislaw, *The Sexual Life of Savages in North-west-*

*ern Melanesia* (London 1929) p. 2-7, 416-51; Lesser, Alexander, "Kinship Origins in the Light of Some Distributions" in *American Anthropologist*, n.s., vol. xxxi (1929) 710-30; Thurnwald, R., "Banaro Society" in *American Anthropological Association, Memoirs*, vol. iii (1916) 251-391.

KIRBY, JOHN, JR. (1850-1925), American industrialist. A manufacturer and director in many small corporations, Kirby was one of the conspicuous advocates of the open shop and an organizer of anti-union employers' associations. He was instrumental in evolving a new and effective type of employers' association consisting of employers in different industries in the same city. The Dayton Employers' Association formed in 1901 under Kirby's leadership actively promoted similar associations in a number of middle western cities, the general object being to resist or to eliminate strong unions. Through these associations a number of defeats were inflicted upon unions, notably in Chicago and Indianapolis. At the meetings of the National Association of Manufacturers in 1902 and 1903, when that association for the first time adopted a belligerent anti-union program, Kirby was one of the principal orators on behalf of such a course. Indeed he wanted to alter and enlarge the association, to make it a general federation including not only manufacturers but all types of employers, for the purpose of spreading the open shop. This move was defeated and instead Kirby helped to organize the Citizens' Industrial Association of North America, which for several years was prominent in the open shop movement. In 1909 he was elected president of the National Association of Manufacturers and followed closely in the footsteps of his belligerent predecessors, Parry and Van Cleave. He served until 1913. During Kirby's administration anti-union feeling ran high in connection with the trial of the union ironworkers for dynamiting the Los Angeles Times building, and he used these events to "prove" that the American Federation of Labor was "a cold, merciless and murderous labor trust." Under his administration the lobbying activities of the National Association of Manufacturers, organized by his predecessors, continued until exposed by a congressional investigation in 1913. Kirby was also active in the National Metal Trades Association and in 1916 became a charter member of what is now the National Industrial Conference Board.

Kirby's presidential addresses are remarkable for their emotional fanaticism and for a picturesque use of Biblical metaphor. A more re-

strained statement of his ideas is to be found in an article on industrial combinations (American Academy of Political and Social Science, *Annals*, vol. xliii, 1912, p. 119-24). He concedes the theoretical desirability of labor combinations for improving the moral, intellectual and pecuniary condition of members if they confine themselves to "fair" methods, by which he means methods other than violence, strikes and boycotts.

JEAN ATHERTON FLEXNER

*Consult:* Bonnett, C. E., *Employers' Associations in the United States* (New York 1922) ch. x; Mitchell, John, "Hostility of the Manufacturers' Association" in *American Federationist*, vol. xvi (1909) 668-71.

KIRCHMANN, JULIUS HERMANN VON (1802-84), Prussian philosopher and sociologist. After attending the universities of Leipzig and Halle Kirchmann entered the civil service. He was prosecuting officer of the Berlin criminal court and later vice president of an appeal court; he was removed from the latter post in 1867 for advocating birth control as the solution of the social problem. In 1848-49 he was member of the Prussian Diet for Berlin, sitting in the left center led by Rodbertus, and from 1871 to 1876 a member of the Progressive party in the Reichstag. Championing "common sense" in politics Kirchmann first stigmatized the Prussian and Imperial Diet systems, which through a cunning arrangement of franchise and constituencies reduced parliament to a tool of the crown, as *Schein-Constitutionalismus* (sham constitutionalism). He opposed republican ideas in 1848 and advocated a combination of authority and democracy by means of a parliamentary government assisted by a well developed civil service; the standing army was to be replaced by militia. His pamphlets on economics provoked the famous *Soziale Briefe an von Kirchmann* (3 vols., Berlin 1850-51) of his friend Rodbertus. He rejected Hegel's dialectic, accepted Kant's critique of knowledge and inclined to positivism; in his later years he was much interested in Comte and tried to introduce sociology as a systematic science into Germany. As the author of several works on criminal and procedural law he startled the legal world as early as 1847 by proposing to free legal science from obsolete logical and verbal methods, which he characterized as unscientific. He proposed to make of the law a real science by adopting what he called political method. His position in this respect was very close to that of the modern sociological school of jurisprudence.

He wrote many philosophical works, edited *Kirchmanns philosophische Bibliothek* and was for many years president of the Berlin Philosophical Society and a frequent contributor to its publications. A sensualistic realist, Kirchmann regarded sentiment or respect for authority—parents, teachers, state officials, priests, the monarch, the sovereign people—as the basis of morals; the highest authority being God, who exists as a feeling if not as a reality. Religion is a great power for good and evil among the masses; evil—oppression rather than superstition—may be avoided through religious freedom. Morality is a personal not a public matter; political science is concerned only with determining the reasonableness of government.

THEODOR STERNBERG

*Important works:* *Die Werthlosigkeit der Jurisprudenz als Wissenschaft* (Berlin 1848); *Philosophie des Wissens* (Berlin 1864); *Über die Unsterblichkeit* (Berlin 1865); *Über den Communismus der Natur* (1866; 2nd ed. Leipzig 1872); *Die Lehre vom Wissen* (Berlin 1868); *Aesthetik*, 2 vols. (Berlin 1868); *Die Grundbegriffe des Rechts und der Moral* (Berlin 1869); *Katechismus der Philosophie* (Leipzig 1877, 2nd ed. 1881).

*Consult:* Lasson, A., and Meineke, J. H. von *Kirchmann als Philosoph*, *Philosophische Vorträge*, n.s., vol. ix (Halle 1885); Hartmann, E. von, J. H. v. *Kirchmanns erkenntnistheoretischer Realismus* (Berlin 1875); Sternberg, Theodor, J. H. v. *Kirchmann und seine Kritik der Rechtswissenschaft* (Berlin 1908), and in *Allgemeine deutsche Biographie*, vol. I (Leipzig 1906) p. 167-77; Stintzing, R. von, and Landsberg, E., *Geschichte der deutschen Rechtswissenschaft*, 3 vols. (Munich 1880-1910) vol. iii, pt. ii, p. 737-43; Valentini, Veit, *Geschichte der deutschen Revolution von 1848-49*, 2 vols. (Berlin 1930-31) vol. ii.

KIREYEVSKY, IVAN VASILYEVICH (1806-56), Russian Slavophile. As a young man Kireyevsky was strongly indoctrinated with German idealistic philosophy. In 1827 together with his younger brother Petr, who later gained prominence as a collector of folk songs and who exerted a profound influence on Ivan's development, he joined a discussion circle led by the poet Venevitinov and the novelist prince Odoevsky; the members of this group were young Schellingians who repudiated the revolutionary legacy and viewpoint of the Decembrists. Kireyevsky's first important work was a penetrating appraisal of Pushkin's poetry, which was followed by a brilliant article on Russian literature in 1829. After a short sojourn abroad he founded in 1832 the *Evropeyets*, a review which enjoyed the cooperation of the best Russian writers, but was suppressed after the second issue. In this review he objected to the cultural isola-



tion of Russia and advocated the adoption of western education. Shortly thereafter his outlook changed radically: he became a devout follower of the Russian church and plunged into a study of patristic literature. Thus arose the peculiar fusion of Hegel and Schelling with Eastern Orthodox theology which is embodied in the philosophy of Slavophilism, formulated for the first time by Kireyevsky. The main outlines of this philosophy were sketched by Kireyevsky not later than 1839, but its amplified presentation appeared in print only in 1852 in the columns of *Moskovsky sbornik*, a magazine which he edited.

The focal point of Kireyevsky's Slavophilism is the conception of *bit*—a system of spiritual values and social relations shaping themselves independently of human calculations. Russian *bit* escaped the influence of the three most important institutions of western Europe: the Roman Catholic church with its extreme emphasis on logic, which inhibits the living understanding of inner spiritual life and the unbiased contemplation of outward nature; the juridical legacy of ancient Rome, which reduces the individual to a bundle of absolute property rights; and the political organization born of conquest. Underlying Russian *bit* is the living spiritual philosophy of eastern church fathers, which sublimates the rational-mechanical reason to a morally free speculation and is responsible for the characteristic features of Russian social organization, of which the primary foundation is the living individual. The land in Russia belongs to the community, because the latter consists of families composed of individuals who can till it, while the landlord's right is conditioned by his relation to the state. The principal cause of all evils and shortcomings in Russian life is the conflict between the true Russian civilization, which is not to be identified with petrified Byzantinism, and the cultural elements borrowed from the west. The remedy lies not in a wholesale repudiation of western rationalism and science; Kireyevsky and other Slavophiles advocated instead a rather mystical synthesis of western culture with eastern Christianity.

SOLOMON KUZNETS

*Works:* The most complete edition in Russian is that by M. O. Gershenzon, 2 vols. (Moscow 1911), with materials for Kireyevsky's biography; N. Bubnoff's translation of some of Kireyevsky's essays appeared as *Russlands Kritik an Europa* (Stuttgart 1923).

*Consult:* Gershenzon, M. O., *Istoricheskaya zapiski* (Historical memoranda) (Moscow 1910) p. 3-40; Masaryk, T. G., *Zur russischen Geschichts- und Religions-*

*philosophie*, 2 vols. (Jena 1913), tr. by E. and C. Paul as *The Spirit of Russia* (London 1919) vol. i, ch. ix; Koyré, A., *La philosophie et le problème nationale en Russie au début du XIX<sup>e</sup> siècle* (Paris 1929).

KIRK, SIR JOHN (1832-1922), British colonial agent. Kirk studied botany and medicine at Edinburgh University and was selected to accompany David Livingstone on his official Zambesi expedition from 1858 to 1863. From 1866 to 1887, in the service of the Foreign Office and the government of India, he represented British commercial, philanthropic and political interests at Zanzibar, where he acquired a dominant position as the trusted friend of the Arab sultan Barghash. In this capacity and later as a director of the Imperial British East Africa Company he helped to lay the foundations of British rule in Uganda and Kenya. At this time the slave trade was flourishing on the east coast of Africa, mainly in the hands of the Arabs, who devastated central Africa from their base at Zanzibar. Like Livingstone, Kirk was deeply impressed by the evils of the traffic and next to him was the chief means of ending the scourge; he became the chief agent of the British government in pressing for outlawry of the trade. Largely through his influence Barghash was persuaded in 1873 to prohibit all export of slaves and to close all public slave markets throughout his dominions. Kirk headed the British delegation at the Brussels Conference of 1889-90 which outlined the system for exterminating the interior slave trade, and it was he who suggested the method adopted by the British in various parts of Africa for the abolition of slavery itself. This method deprived the institution of legal status but avoided the dangers of compulsory emancipation. The younger generation of African administrators long regarded Kirk as the wisest exponent of British traditions in colonial policy.

R. COUPLAND

*Consult:* Coupland, Reginald, *Kirk on the Zambesi* (Oxford 1928); P., D., in Royal Society of London, *Proceedings*, ser. B, vol. xciv (1922-23) p. xi-xxx; Johnston, H. H., in *Geographical Journal*, vol. lxx (1922) 225-28; Lyne, R. N., *Zanzibar in Contemporary Times* (London 1905) p. 69-71, 120; McDermott, P. L., *British East Africa or Ibea* (London 1893) p. 219-20, 252-60.

KISELEV, PAVEL DMITRIEVICH, COUNT (1788-1872), Russian statesman. After a brilliant military career Kiselev was appointed head of the provisional government of Moldavia and Wallachia, territories which were temporarily occupied by Russia after the Russo-Turkish War

of 1828-29. While there he enacted important administrative and social reforms and was largely instrumental in liberating the peasants from the feudal power of the landowners. Upon his return to Russia in 1834 he was appointed member of the Council of State and in 1838 was entrusted with the administration of peasant serfs on the state domains. Kiselev introduced self-government in the villages, augmented the size of land parcels, improved the methods of agriculture and increased the number of schools. Although the peasants rebelled against the excessive bureaucratic regulation, their condition was generally improved. Along with these reforms Kiselev applied himself to the task of preparing the emancipation of all Russian peasants. Russia at the time was already entering upon a period of capitalistic development and the continuance of feudal relations was a retarding factor in the tempo of industrial expansion. Nicholas I recognized the necessity of freeing the peasants and lent a willing ear to emancipation projects. The majority of landowners were opposed to emancipation, and others approved the freeing of the peasants without giving them any land. Kiselev evolved a plan according to which the peasants would be given personal freedom and the landowners would remain in legal possession of the land, subject, however, to the obligation of granting the peasants an inalienable lease on a definite parcel of land in return for definite dues, the size of the parcel and the amount of payment to be fixed by law. Under the pressure of the opposing landowners, however, the plan was deprived of its compulsory features and when finally enacted in the ukase of 1842 it remained practically a dead letter. With the liberation of the peasants in 1861 the plan became obsolete. Kiselev was appointed ambassador to Paris in 1856 and retired from public life in 1862.

A. A. KIF-EWETTER

*Consult:* Zablotsky-Desyatovsky, A. P., *Graf P. D. Kiselev i ego vremya* (Count Kiselev and his times), 4 vols. (St. Petersburg 1882).

KISTYAKOVSKY, ALEXANDER FEDOROVICH (1833-85), Russian criminologist. After studying at the University of Kiev, where he was later professor of criminal law from 1864 until his death, Kistyakovsky complemented his university studies abroad and investigated the leading penal institutions of Europe. His approach to the problems of criminal law was from the point of view of the positivism of Auguste Comte; with a broad humanitarian outlook he

emphasized the environmental determinants of crime and society's responsibility for the criminal. He believed that laws must be studied historically in relation to the social conditions prevailing at the place and time of their origin and that criminal law, first motivated by revenge and then by a desire to intimidate the criminal, should be directed toward social reform and prevention. Opposed to capital punishment he urged more humane treatment of juvenile delinquents through such methods as that adopted in Rubeshevsky's colony for young offenders, attacked the severe administrative penalties which at that time were in wide use in Russia and defended the interests of accused persons in the spirit of modern criminal procedure. He wrote on the legal history of the Ukraine and brought the theories of foreign criminologists to Russian audiences. For many years he was president of the Legal Society of Kiev, which he founded and for which he prepared a program advocating measures of legal reform.

M. CHUBINSKY

*Important works:* *Issledovanie o smertnoy kazni* (Inquiry into capital punishment) (Kiev 1867, 2nd ed. 1896); *Elementarny uchebnik obshchego ugolovnogo prava* (Elementary textbook of criminal law) (Kiev 1875, 3rd ed. 1891), *Molodie prestupniki i uchrezhdeniya dlya ikh vspriavleniya s obozreniem russkikh uchrezhdeniy* (Juvenile delinquents and institutions for their reform, with a survey of Russian institutions) (Kiev 1878), "O zadachakh i tselyakh nashikh uvidcheskikh obshchestv i otnosheniye ikh k sudebnoy reforme" in *Zhurnal grazhdanskogo i ugolovnogo prava*, vol. XI (1881) no. I.

*Consult:* Articles by B. Naumenko, I. Luchitsky and I. Foyntsky in *Kievskaya starina*, vol. XLVIII (1895) no. 1, p. 1-38, 64-102.

KISTYAKOVSKY, BOGDAN ALEXANDROVICH (1868-1920), Russian sociologist and jurist. Kistyakovsky lectured at the College of Law at Yaroslavl from 1907 to 1916 and from 1916 to 1920 was professor at the University of Kiev. He was editor of the *Uridichesky vestnik* from 1911 to 1917. A disciple of Simmel, Windelband and Rickert, Kistyakovsky was one of the most able representatives of the neo-Kantian movement in Russia. From the naturalistic and organic point of view his sociological criticism, particularly of Spencer's system, had considerable repercussion not only in Russia but also in Germany. Likewise his analysis of the method of the Russian subjective school of sociology (Lavrov, Mikhaylovsky and Kareyev) must be regarded as a classic. In the theory of law Kistyakovsky developed a consistent methodological

pluralism. He insisted on the necessity of distinguishing four different conceptions of law, each of them corresponding to one of the aspects of objective juridical reality: the dogmatic and etatist conception of law, which is based on a procedure of formal classification; the sociological conception; the psychological conception; and the normative philosophical conception. He maintained that these four conceptions, each of which is upheld by some jurists as the only correct one, represent abstractions of single aspects of law, the fundamental unity of which can be best seen when it is regarded as a *Kulturgut*, an element of culture spiritualized and imbued with values. Thus Kistyskovsky as distinguished from the German neo-Kantians was able to break completely through the confines of juridical positivism, to appreciate in its entirety the importance of the movement toward the "living law" and "free law" and to emphasize the role of the dynamic and irrational in juridical reality.

GEORGES GURVITCH

*Works:* *Gesellschaft und Einzelwesen* (Berlin 1899); *Sotsialniya nauki i pravo* (Social sciences and the law) (Moscow 1916).

*Consult:* Starosolskyj, V., "Bohdan Kistiakovskij und das russische soziologische Denken" in *Ukrainischer wissenschaftlicher Institut in Berlin, Abhandlungen*, vol. ii (1929) 117-26.

KIUPRILI FAMILY. *See* KÓPRULÜ FAMILY.

KJELLÉN, RUDOLF (1864-1922), Swedish political scientist. Kjellén was professor of political science at the University of Göteborg from 1890 and at the University of Uppsala from 1916. He began his career with a series of papers and books on constitutional law which show the conservative and orthodox influence of his master, Oscar Alin. But the great political events of the last two decades of the nineteenth century, the beginning of the era of imperialism and the study of Ratzel's *Politische Geographie* (1897), which impressed him deeply, revealed to him the inadequacy of the purely juridical view in political science. He therefore made it his life work to achieve a fuller comprehension of states as powers in action in the theater of world politics. Such a conception involved an empirical study of the resources material and spiritual possessed by each of the powers. In his first great work, *Stormakterna* (1905), he made a realistic analysis of the participants in the game of great powers that led to the World War.

After collecting this material Kjellén set about the task of constructing a new biological system

of political science, the principles of which are most fully expounded in *Staten som livsform* (1916), and *Grundriss zu einem System der Politik* (1920). In designating his study *Politik* he uses the term not in the sense of practical political action but in the Aristotelian sense of a science of the state, which for Kjellén is a science of the state considered as an organism whose principal attribute is power. There are five aspects of this study. *Demopolitik* is an investigation of the population and of its physical and mental characteristics as a race and nation. *Sociopolitik* analyzes various classes, professional groups and other elements which comprise the social structure of the population. *Kratopolitik* deals genetically and realistically with the governmental organization and constitutional forms through which the state expresses its active will. While these three categories represent the endogenous elements in the state's power, it is the exogenous elements which constitute the subject of the two final categories, *Geopolitik* and *Oekopolitik*. *Geopolitik*, manifesting in its conception the direct influence of Ratzel, aims to analyze those problems and conditions of life in the state which arise from geographical factors and natural environment. *Oekopolitik* studies the economic exploitation of the nation's resources, in so far as such activity directly or indirectly affects the power of the state. In his monograph, *Sverige* (1917), Kjellén illustrated his system by applying its principles and method to a study of Sweden. Nearly all of the individual components of his theory had appeared in some form or other in the doctrines of previous political scientists, economists or geographers, but the system as a whole is one of great originality. Its influence in Germany has been even greater than in Sweden, although it has affected political scientists of the juridical type less than historians and geographers. In pursuing Kjellén's method the Germans have somewhat neglected the other aspects of his system in favor of his *Geopolitik*, which has developed into a kind of popular catchword.

WALTHER VOGEL

*Important works:* *Stormakterna*, 2 vols. (Stockholm 1905; 2nd ed., 4 vols., 1911-13); *Samtidens stormakter* (abr. ed. of *Stormakterna*, Stockholm 1914), German translation by C. Koch as *Die Grossmächte der Gegenwart* (Leipzig 1914; 22nd rev. ed. by Karl Haushofer as *Die Grossmächte vor und nach dem Weltkrieg*, 1930); *Stormakterna och världskrisen* (new rev. ed. of *Samtidens stormakter*, Stockholm 1920), German translation by W. A. Berendssohn as *Die Grossmächte und die Weltkrise* (2nd ed. Leipzig 1921); *Staten som livsform*

(Stockholm 1916), German translation by J. Sandmeier as *Der Staat als Lebensform* (4th ed. Berlin 1924); *Grundriss zu einem System der Politik* (Leipzig 1920); *Sverige* (Sweden) (Stockholm 1917); *Politiska essayer*, 3 vols. (Stockholm 1914–15); *Världspolitik 1911–19* (Uppsala 1920).

*Consult:* Vogel, W., "Rudolf Kjellén und seine Bedeutung für die deutsche Staatslehre" in *Zeitschrift für die gesamte Staatswissenschaft*, vol. lxxx1 (1926) 193–241; Haussleiter, O., "Rudolf Kjelléns empirische Staatslehre und ihre Wurzeln in politischer Geographie und Staatenkunde" in *Archiv für Sozialwissenschaft und Sozialpolitik*, vol. liv (1925) 157–98.

KLEIN, FRANZ (1854–1926), Austrian jurist. Klein gave up his practise as a barrister in 1885 to lecture on the Austrian law of civil procedure at the University of Vienna. He soon became prominent as a jurist and literary spokesman of the reform movement in this field. Called to the ministry of justice, he drafted the Austrian code of civil procedure of August 1, 1895, which came into force January 1, 1898. It is acknowledged to be one of the best in the world. Its outstanding ideas are publicity, directness and, above all, the oral method of procedure. The administration of justice is adapted to social needs. It is made possible to manage a legal action expeditiously and with little expense. The law of May 27, 1896, relating to the execution of judgments, which is also Klein's work for the most part and which went into effect at the same time as the code of civil procedure, aims to spare the debtor as much as possible and endeavors to prevent the destruction of values. After he had instituted his procedural reforms Klein became minister of justice for several years. The profound social reference which guided Klein in all his scientific and reformatory activity is evident also in his work for the protection of youth, which takes account of social factors; in his solicitude for proper housing, which he greatly advanced by his law of 1912 regarding building rights; and in his writings. Among the last should be mentioned *Pro futuro* (Vienna 1891), *Mündlichkeitstypen* (Vienna 1894), *Die psychologischen Quellen des Rechtsgehorsams und der Rechtsgeltung* (Berlin 1912), *Das Organisationswesen der Gegenwart* (Berlin 1913), *Der Zivilprozess Oesterreichs* (ed by Friedrich Engel, Mannheim 1927). After the World War Klein, who was an unswerving champion of the larger German unity, concerned himself with juristic problems growing out of the peace treaties. He was undoubtedly one of the greatest jurists of Austria.

KARL GOTTFRIED HUGELMANN

*Consult:* Sperl, Franz, in *Jherings Jahrbücher für die*

*Dogmatik des bürgerlichen Rechts*, vol. lxxviii (1927–28) v–xxxvi; Benedikt, Edmund, in *Neue oesterreichische Biographie*, ed. by Anton Bettelheim, 7 vols. (Vienna 1923–31) vol. iv, p. 9–30, and further bibliography there cited.

KLUCHEVSKY, VASILYI OSSIPOVICH (1841–1911), Russian historian. Kluchevsky, the son of a poor village priest, was born in the province of Penza. He prepared himself for the clergy in the local schools but under the influence of the growing radical movement renounced his clerical career and entered the University of Moscow in 1861, the year of the emancipation of the serfs under Alexander II. The impression of this event, which he retained throughout his life, was responsible for his decision to study the history of the social classes in Russia in the light of Russian economic development. Although, as Kluchevsky himself declared, he owed his general view of Russian history to his teacher Soloviev, to whom he was indebted also for much of the material he used, Kluchevsky's work represents a distinct advance over that of his teacher. He studied historical processes from a sociological point of view; general schemes and interpretation were to him more important than the mere accumulation of factual material, and he emphasized especially the modifying influences of geographical factors. Above all he represents the synthesis of the two previous schools of history: the westernists, who saw in Russian history a development parallel to that of western Europe; and the Slavophiles, who emphasized the peculiarities of Russian development.

Kluchevsky's first important work was his doctoral dissertation, *Boyarskaya дума drevney Rusi* (Duma of boyars in ancient Russia, Moscow 1882, 4th ed. 1909), in which he traced the causal connection of this institution with the economic and social processes. Following this came monographs on the history of Russian serfdom and especially on the origin and composition of Russia's earliest representative assemblies. In the latter study Kluchevsky disproved the existing theory of the *sobor* as an elected assembly of the people and showed that it was recruited by official selection of the ruling power. His most important work was his *Kurs russkoy istorii* (Course of Russian history, 5 vols., Moscow-St. Petersburg 1904–21; tr. into German by R. von Walter, 4 vols., Stuttgart 1925–26, and an abridged translation into English by C. J. Hogarth, London 1911–31), which was prepared from his course of lectures at the

University of Moscow and which extended to the reign of Nicholas I. His talent for microscopic analysis of the evolutionary processes in history is successfully blended with one for vivid synthesis and an intuitive grasp of the psychology of the past. He considered colonization to be the distinctive feature of Russian development and looked upon the stages of colonization as marking the divisions of Russian history. As he reached the more modern period his sympathetic approach weakened and he became critical of the borrowings from western Europe. He drew attention to the mechanical and external side of the Europeanization of Russia by Peter the Great and turned his wrath especially against the nobles and serf owners whose unconsidered imitation of the west destroyed the unity of Russian cultural evolution.

Kluchevsky was in full sympathy with the constitutional movement in Russia and as early as January, 1905, soon after the "red Sunday" predicted the fall of the Romanov dynasty. He was a member of the Constitutional Democratic party (Cadet) and foresaw the victory of the revolutionary movement as a consequence of the government's breach with the moderate majority in the Duma.

#### PAUL MILIUKOV

*Consult:* Kiesewetter, A., "Kluchevsky and His 'Course of Russian History'" in *Slavonic Review*, vol. I (1923) 504-22, Bogoslovsky, M. M., in *Zeitschrift für osteuropäische Geschichte*, vol. III (1913) 309-18, V. O. Kluchevsky: *Charakteristiki i vospominaniya* (Moscow 1912), a memorial volume with essays by Miliukov, A. S. Lappo-Danilevsky, Platonov, and others, Moscow University, Imperatorskoe Obshchestvo Istorii i Drevnostey Rossiyskikh, *Chteniya* for 1914, vol. I.

KNAPP, GEORG FRIEDRICH (1842-1926), German economist. Knapp was a student of Helferich at the University of Göttingen and attended Engel's statistical seminar at the University of Berlin. In 1869 he was appointed head of the municipal statistical office of Leipsic. After teaching at the University of Leipsic for many years he was appointed professor of economics at the University of Strasbourg, where he remained until the closing of the German schools in 1918.

Knapp started his scientific career as a statistician. He investigated the methodological principles of population statistics and was the first to formulate a systematic theory of mortality measurement. Opposing the viewpoints of Quételet and his followers, who claimed that man's behavior is governed by statistical "laws," he viewed statistics simply as a tool in the

realistic study of the manifold social phenomena and fully realized the limitations of statistical observations.

In the *Bauernbefreiung und der Ursprung der Landarbeiter* (2 vols., Leipsic 1887), a product of the second period of his scientific activity, Knapp displayed excellent workmanship in elucidating the development of agrarian organization in Prussia. He analyzed the two forms of manorial organization, the *Grundherrschaft* (landlordship) and the *Gutherrschaft* (estate ownership), and viewed the latter as a capitalistic form of land utilization engaged in production for market. The hereditary vassalage of the peasants represented the labor system peculiar to the large agricultural estates of the time. The abolition of feudal relations, which Knapp described in detail, did not eliminate the large estates but rather strengthened their position. The introduction of the new system of free wage labor, however, necessitated a wide readjustment in agricultural organization and provided the background for the subsequent measures of rural reform.

Knapp's last major work, *Staatliche Theorie des Geldes* (Leipsic 1905, 4th ed. Munich 1923; tr. by H. M. Lucas and J. Bonar, London 1924), aroused a storm of controversy, in the course of which his doctrines were considerably distorted. According to Knapp money derives its validity not from the intrinsic value of the metal out of which it is made or which it represents, but from the function as a means of payment assigned to it by an act of state. His "chartalism," a version of the nominalistic conception of money, considered paper money to be a regular and legitimate form of money. Knapp did not, however, advocate an arbitrary issue of notes or a general abolition of the gold standard. He set strict economic limits to the issue of notes by the state and recognized some of the advantages of a metallic standard, particularly as a stabilizing factor in foreign exchange.

While Knapp deliberately refrained from direct participation in public affairs he exerted a profound influence from his university chair. His contributions to statistical methods were incorporated into official statistics and his seminar at the University of Strasbourg—at times in collaboration with Schmoller and Brentano—became the center of studies in political economy. The work of the seminar is contained in the thirty-four volumes of *Abhandlungen* edited by Knapp.

FRANZ GUTMANN

*Important works:* *Über die Ermittlung der Sterblichkeit*

aus den Aufzeichnungen der Bevölkerungsstatistik (Leipsc 1868); *Die Sterblichkeit in Sachsen nach amtlichen Quellen dargestellt* (Leipsc 1869); *Theorie des Bevölkerungswechsels* (Brunswick 1874); *Einführung in einige Hauptgebiete der Nationalökonomie* (Munich 1925). This work contains, in addition to a number of articles, the papers *Landarbeiter in Knechtschaft und Freiheit* (Leipsc 1891) and *Grundherrschaft und Rittergut* (Leipsc 1897), which had previously been published separately.

Consult: "Georg Friedrich Knapp, ein literarisches Bildnis" in *Wirtschaftsdienst*, vol. vii (1922) supplement to no. ix; Schumpeter, J., in *Economic Journal*, vol. xxxvi (1926) 512-14; Gutmann, Franz, in *Jahrbuch für Nationalökonomie und Statistik*, vol. cxxiv (1926) 193-204; Bortkiewicz, L. von, "Die Frage der Reform unserer Währung und die knappsche Geldtheorie" in *Annalen für soziale Politik und Gesetzgebung*, vol. vi (1918-19) 57-102.

KNAPP, MARTIN AUGUSTINE (1843-1923), American interstate commerce commissioner, federal judge and railroad labor mediator. Knapp practised law for many years but the later portion of his life was devoted to the federal public service, primarily in connection with railroad regulation. Appointed a member of the Interstate Commerce Commission by President Harrison in 1891, he served on the commission continuously from 1891 to 1910 and as its chairman from 1898 to 1910. He resigned to accept a circuit judgeship and to serve as presiding judge on the newly created United States Commerce Court, which was abolished in 1913. From the beginning of his chairmanship of the commission he also served as mediator in railroad labor disputes, first ex officio under the Erdman Act of 1898 and later through appointment by President Wilson to the Board of Mediation and Conciliation which was created by the Newlands Act of 1913.

Knapp exerted great influence upon the strengthening of the Act to Regulate Commerce and upon the commission's early exercise of its new powers. By 1898 much of the administrative authority assumed under the original statute had been invalidated by judicial decision; and the commission under his leadership urged repeatedly and forcefully that it be vested with rate making power and that the procedure for the enforcement of its orders be so changed as to recognize the dominance of administrative control. These results were achieved in 1906 by the Hepburn Act as construed by the commission and as sustained by the Supreme Court. The attempt of the Commerce Court, over which Knapp presided during its short history, to exercise broad powers of judicial review appears out

of harmony with his experience and attitude while a member of the commission; but these controversies, which were generally resolved by the Supreme Court in support of the commission, served the important purpose of securing an authoritative definition of the respective spheres of administrative and judicial jurisdiction. As a mediator in railroad labor disputes he participated in numerous settlements and exhibited an informed understanding of the demands of the carriers and their employees; but the inadequacy of the legislation under which he and his colleagues were required to act was disclosed by their helplessness in the nation wide dispute of 1916, as a result of which Congress by the passage of the Adamson Act virtually set itself up as an arbitration tribunal.

While his service in all these spheres was never independent but always in cooperation with others, Knapp unquestionably played an important role in the development of the principles and practices of railroad regulation by the federal government.

I. L. SHARFMAN

KNAPP, SEAMAN ASAH (1833-1911), American educator. Knapp was largely responsible for the development of agricultural extension education in the United States. For six years he was associated with the Iowa State Agricultural College and for three years was editor of an agricultural magazine. He studied agricultural problems in Japan, China, the Philippine Islands, India and Porto Rico from 1898 to 1902 under the direction of the United States secretary of agriculture. From 1902 to 1910 he was in charge of the work of the Department of Agriculture in demonstrating the value of cooperative enterprise to southern farmers.

The essence of this work is demonstration carried out by the farmers under the direction of a specialist known as county agent or home demonstration agent. Efforts to educate farmers by laboratory method similar to that used in training physicists or chemists had been tried by several agricultural colleges before Knapp launched his program. It was, however, due to his promotion work, begun in Texas and Louisiana, that the principle became the object of a nation wide organization which has helped greatly to improve conditions of rural life in America.

EDWARD WIEST

Consult: Martin, O. B., *The Demonstration Work* (Boston 1921).

KNIBBS, SIR GEORGE HANDLEY (1858–1929), Australian statistician. Knibbs, who was born in Sydney, began his career as a surveyor; after 1889 he lectured on engineering and in the year 1905–06 he was acting professor of physics at the University of Sydney. In 1902 he was appointed one of the commissioners on education and in 1905 commissioner on technical education for New South Wales. In 1906 he was selected to create the Bureau of Statistics for the Commonwealth of Australia, which he directed until 1921. As commonwealth statistician he coordinated the work of the existing statistical bureaux of the states and organized publications to present material gathered by the states together with data pertaining directly to the commonwealth. Of these publications the most comprehensive is the *Official Year-Book*, of which the first volume, issued in 1908, contains corrected statistics for the period from 1788 to 1900, authoritative statistics for the years 1901 to 1907 and a history of Australian statistics. Knibbs was most attracted to those branches of statistical work which offered the greatest scope for mathematical exposition, particularly the study of population and index numbers. His outstanding work is *The Mathematical Theory of Population* (Melbourne 1917) printed as an appendix to the first volume of the report on the Australian census of 1911, the first to be undertaken by central authority. It deals with general mathematical technique in statistics and its application to special problems of natality, masculinity, nuptiality, fertility, mortality and migration; many new methods are expounded including the extremely flexible curve  $y = Axme^{nx^p}$  and secular trends of mortality. His work on index numbers is incorporated in the reports of the bureau's Labour and Industrial Branch, of which *Report* no. 1 (1912) and no. 9 (1919) are particularly important. He also devised the mathematical formulae on which the Australian land and income taxes are assessed. From 1921 to 1926 he directed the Institute of Science and Industry, which commenced under his guidance a number of important industrial research projects. Shortly before his death he published *The Shadow of the World's Future* (London 1928), in which he stressed the danger of overpopulation.

E. T. MCPHEE

KNIES, KARL GUSTAV ADOLF (1821–98), German economist. Knies was professor of economics at the University of Freiburg i. Br. and

from 1861 to 1865 represented the university in the diet of Baden, where he was leader of the liberal party in its struggle with ultramontaniam. In 1865 he was appointed professor at the University of Heidelberg, where he remained until his retirement in 1896.

Knies, one of the chief exponents of the historico-ethical school in economics (see *ECONOMICS*, section on *HISTORICAL SCHOOL*), was influenced by Hegel's philosophy of history and in his turn exercised a profound influence on Schmoller and other social reformers in Germany. He conceived economics as belonging neither to the natural sciences nor to the mental sciences but to the group of historical disciplines which have for their object the study of man in society in terms of its historical growth. The aim of economics as outlined in his theoretical work *Die politische Ökonomie vom Standpunkt der geschichtlichen Methode* (Brunswick 1853; 2nd ed. as *Die politische Ökonomie vom geschichtlichen Standpunkte*, 1883) is to trace the causal factors underlying economic phenomena with a view to establishing laws of development and formulating generalizations for each successive stage of economic life. As economic phenomena have no independent existence of their own they can be understood only when studied in their interrelation with the other aspects of social life, of which they form an intimate part. Only when this approach is taken does it appear that man is not motivated exclusively by self-interest; other fundamental instincts are the sense of membership in the community and the sense of justice and equity. Consequently abstraction from ethical and social considerations, as exemplified in deductive economics in England, leads to erroneous conclusions which if made the basis for economic conduct may endanger the harmonious development of society. As the state is the embodiment of both the economic and the ethical aspirations of the nation, it is its duty to interfere in economic life in order to counteract an excessive emphasis on self-interest and to secure not only the maximum of production but also the most equitable distribution.

Knies applied his methodological principles to the study of concrete economic phenomena. Thus his *Geld und Kredit* (2 vols., Berlin 1873–79; 2nd ed. of vol. i, 1885; reprinted Berlin 1931) is still unsurpassed for its masterly treatment of the fundamental problems of money, capital, credit and interest and for its emphasis on the close interrelation of economic and legal institutions. In a supplementary volume, *Welt-*

*geld und Weltmünzen* (Berlin 1874), he distinguishes between the domestic and international uses of currency and analyzes the concept and legal status of a currency designed for international use. Noteworthy also are his earlier volumes, *Die Eisenbahnen und ihre Wirkungen* (Brunswick 1853), in which he discusses the economic effects and cultural incidence of railroad transportation, and *Der Telegraph als Verkehrsmittel* (Tübingen 1857), which is an exemplary treatment of the system of communication. Knies possessed a complete mastery of statistics, for which he claimed the dignity of an independent discipline in *Die Statistik als selbständige Wissenschaft* (Cassel 1850).

HANS GEHRIG

*Consult:* Weber, Max, *Gesammelte Aufsätze zur Wissenschaftslehre* (Tübingen 1922) p. 1-145, Gehrig, Hans, *Die Begründung des Prinzips der Sozialreform, Sozialwissenschaftliche Studien*, no. 11 (Jena 1914) p. 255-68; Schmoller, Gustav, *Zur Literaturgeschichte der Staats- und Sozialwissenschaften* (Leipzig 1888) p. 204-10; Lifschitz, F., *Die historische Schule der Wirtschaftswissenschaft* (Berne 1914) ch. iv.

**KNIGHTS OF LABOR.** The Noble Order of the Knights of Labor had two apparently irreconcilable aspects. In its program and ideology it embodied many of the older cooperative socialist ideals while at the same time it was permeated with middle class liberalism; it held to a diminishing agrarian radicalism while it tried to adapt itself to the growth of mechanized industry and urbanism. For a time, from 1877 to 1887, the Knights of Labor dominated the American labor movement, aroused the workers to a high pitch of enthusiasm and demonstrated its power in great struggles with employers. Its decline, as sudden as its rise, was due mainly to the conflicting and often vague character of its objectives and to the ascendancy of a craft unionism absorbed in the business problems of its own skilled membership with scant concern for the unskilled or the theory of class solidarity.

In the heat of the second American revolution, before the frontier closed, before business enterprise hardened into a national capitalist system and the mind of laborers into a wage consciousness, while the disposition of the public lands and the natural resources, the determination of the medium of exchange and banking methods, modes of production and levels of distribution, control of agencies of communication and the ownership of transportation, combinations of employers and corresponding rights of employees were still debatable issues, the Knights of

Labor achieved a coast to coast organization and attempted to influence decisions on all such public matters, which they considered bound up with the everyday struggles of labor. The pattern for the total American civilization had not yet been fixed, and they believed that creative action could yet fashion it on dreams of the "good life" for all its inhabitants. It was from the Declaration of Independence with its pronouncements on freedom and the privilege to pursue happiness, enriched by the French Declaration of the Rights of Man and the concept of fraternity, rather than from Marxism or from British trade unionism that they drew their inspiration, although the latter also had some influence.

Uriah S. Stephens, founder of the Knights of Labor in 1869, was trained for the ministry, taught school, traveled extensively, studied history and became a tailor by trade. "Where," he asked, "if not here in this Western World, shall the patriotism and statesmanship be found to preserve the race from destruction? . . . The entire history of the world, in every age and in every country, as unvarying as the laws that govern the universe, demonstrates the fact that the physical, intellectual and moral condition of mankind is governed entirely by the conditions that surround the productive toiler, and marks the progress of a people, or indicates, unerringly, the downfall of a nation. This should be the only criterion of a statesman, the guide of the political economist, and the inspiration of the philanthropist." Terence V. Powderly, leader of the order throughout its active national career from 1879 to 1893, urged upon the United States plans for a rationalized society. According to Powderly, "the failure which really led to the organization of the Knights of Labor was the failure of the trade union to grapple, and satisfactorily deal with the labor question in its broad, far-reaching principle: the right of all to have a say in the affairs of one."

Behind these great ideals was the reality of the emerging labor movement, developing its forms of organization and trying to clarify its objectives. The panic of 1857 and the Civil War had almost completely disrupted the labor movement; it revived after the war and many unions were formed, one of the most important of which was the National Labor Union founded in 1866. This association united a considerable number of local unions with several farmers' societies and mere political groups; it combined middle class radical politics with a more definite labor program covering shorter hours, inclusive unionism



regardless of craft or skill and organization of the Negro. But the National Labor Union was in its decline by 1870.

During the previous year in Philadelphia dissolution of a garment workers' union led nine of the members (Stephens among them) to form a secret labor society, the Noble Order of the Knights of Labor. Its growth was slow, but it received an enormous impetus from the unemployment and mass discontent which prevailed during the hard times following the panic of 1873. In 1877 the order became a factor in the great strikes of the coal miners and railroad workers; its progress thereafter was rapid and it became the leading national labor organization.

For various reasons it is customary to think of the Knights of Labor as a distinctly American phenomenon. Yet its sponsors were not strictly native. While Stephens had a long American ancestry, Powderly was of Irish parentage; and it was J. L. Wright, a clothing cutter born in Ireland, and Frederick Turner, a gold beater born in England, who drew up its ritual and presided over its secrets at its inception. The Englishman injected his Owenite cooperative enthusiasm into the movement and the Irishmen, particularly Powderly, remained zealous for their kind; Powderly's persistent quest for free homesteads on the public domain to be reserved for settlers reflected his loyal concern for the interests of the Irish who were flooding through the seaports. The very name of the order was a symbol of Old World fraternalism, while the signs and passwords of its secret stage were mediaeval in quality. It was said that Stephens' sojourn in Europe had made him a Marxian, and in the 1870's the reverberations of the Paris Commune echoed through the order. Its membership included all the races that made up the proletariat and the tillers of the soil. It had many features in common with Chartism. But the optimism within the order's directorate, the catholicity of its membership—which included lawyers and politicians, preachers and feminists, small business men and farmers, the skilled and the unskilled, Negroes and whites—the public questions it confronted and its ways of trying to meet them were markedly American at the time. Although the order proposed to organize the entire world and did set up branches in France, Italy, Belgium, England, New Zealand, Ireland and Australia, the impulses of its leaders sprang from a New World environment and an intellectual atmosphere dominated by a small town and farming economy.

The industrial masses in the swiftly growing cities, however, took possession finally of the leaders. The proud motto of the order, "an injury to one is the concern of all," met a fierce response in the mood of wageworkers burdened with a common suffering. At the start the order was influenced by ideas of pure and simple craft unionism; but at its first general assembly in 1878, when the organization definitely assumed national scope, the program of inclusive unionism was adopted. Membership in the Knights was direct, not through affiliated independent unions. The membership was drawn mainly from the unskilled, the new specialized workers created by machine industry and those deprived of their trades by rapid technical changes—nearly all groups of workers ignored by the existing unions of craftsmen and subsequently also by the American Federation of Labor.

Although the national leaders were mainly interested in political reform, the mood of the masses favored more aggressive action and strikes were carried on among miners, machinists, railroad shopmen and other workers. They were bitterly opposed by the employers, who developed an "iron clad" contract in which workers were forced to agree not to join the Knights of Labor. Both the employers' and the workers' moods resulted inevitably in strikes. But the order's national officers did not believe in strikes; they favored arbitration and conciliation. Since employers, however, usually rejected arbitration, the order introduced the boycott into labor disputes as a substitute for strikes and it was used persistently and on a large scale. Amid these developments the national leaders pursued no definite policy, except possibly the policy of avoiding action; Powderly sided now with the socialists, now with the moderates and again with the anarchists. Thus the leaders drifted. The tragedy of bewildered officers played an important part in the drama of the order.

By 1886 the Knights of Labor was at the height of its power with a membership of 702,000. Much of the increase in membership was due to the workers' enthusiastic response to the eight-hour movement, in which the order participated, although the leaders were lukewarm; thus Powderly issued instructions against eight-hour strikes and demonstrations on May Day, 1886. At the very height of its power, however, it met two disastrous reverses. One was the defeat of a strike on Jay Gould's southwestern railroad system. The other was the Haymarket killing, which was used by employers and the press to discredit

the order, although the order had no connection with the demonstration in Chicago, where an unknown person threw the bomb among the police. The national officers not only abandoned but denounced Albert Parsons and his comrades, who were hanged for a crime of which they were probably innocent; this attitude alienated the socialists, anarchists and the more radical workers without sparing the order from continued efforts on the part of its enemies to hold it responsible for anarchy and violence.

These reverses gave new strength to factional disputes, which finally resulted in splitting the organization. The most important of these disputes was that between craft unionists and the more numerous advocates of inclusive unionism. The miners of the Pittsburgh region had early rebelled against dictation by the original assembly of garment cutters in Philadelphia, and the difficulties arising from the diverse labor problems in workshop and coalpit forced some adjustments. Other segments of labor advanced jurisdictional claims, and concessions were made. Nevertheless, the Knights of Labor remained a centralized body with respect to authority and leadership; it was an intertrade alliance, whereas the craft unions demanded autonomy. These unions increased their efforts to gain supremacy within the Knights and revise its plan of organization. The struggle was aggravated by the hordes of reformers and radicals which the order had attracted. Political actionists of the Greenback, labor and socialist schools bored from within and attacked the order from without in an effort to commit it to independent political action, arguing that this was the logic of the Knights' important legislative program; anarchists worked under cover of its banner for revolution against capitalism by violence; "traders in votes, seekers for office, spoils hunters, shopkeepers with an eye to business" allied themselves with the order for this object or that; the boycott was used as a weapon in factories and at the polls—with employers, with commodities, with politicians; cooperators encouraged by the society opened plants, made headway, lost ground. Through all the turbulence of opinion and endeavor to checkmate capitalism Powderly and other exponents of the Knights' *raison d'être* maintained that its role was primarily educational, that social principles must be established by its agitation and that this was prevented by wage consciousness with its narrow and precise planks. Weakened by its motley groups of reformers and radicals, the

order was now abandoned by them and its disruption was accelerated by the revival of prosperity. It is true that prosperity collapsed again in 1893, but by that time the Knights of Labor was dead; and the organized labor movement, represented by the American Federation of Labor, had another policy and program.

The craft unions, originally submerged in the order, became an independent national organization. Internal resistance on the part of the craft unions to the order's ideas of inclusive unionism was followed by their secession and the founding of the American Federation of Labor. In addition the masses were disappointed in the practical work of the order and disgruntled with its political aspirations. As long as there was a chance to mold the government by arousing general public opinion, leaders of the Knights threw their energies into the enterprise. But when the issues of the banks and the currency, the public domain and the railways and the telegraphs were settled by Congress in its own way; when invention had proceeded so far that minute specialization in manufacture was accomplished; when the national market was attained; when cities with factories and tenements rose on the western plains; when associations of industrial captains were knit into compact units for their own advantage; when the concentration of the craft unionists on wages, hours and the immediate interests of the crafts appeared to be the more convincing labor movement, the Knights gave place to the American Federation of Labor modeled on the plan of the British Trades Union Congress—a wage conscious organization in a monarchy. "Practical" men took charge of the labor movement.

In this development no doubt personality was an element. Gompers and Powderly could never pull in the same harness, although they did make some effort to do so. For instance, in 1889 a division of activities and spheres was debated with a view to eliminating dual assemblies by giving the federation control over trades and leaving the Knights supreme over popular education. But the compromise was unacceptable to the Knights. In 1889-90 they lost their industrial character and became political, for the moment carrying the reluctant Powderly with them. Finally in 1893 the socialist and agrarian factions under the leadership of Daniel De Leon ousted Powderly from office and assumed the management of the order. De Leon's agrarian allies broke with him, and he thereupon laid plans for a new socialist union organization, the Socialist

Trade and Labor Alliance. The remaining rank and file drifted for the most part into the American Federation. The Noble Order of the Knights of Labor was no more.

Still there are fundamental achievements to be accredited to the Knights. It circulated ideas of enduring vigor. The Knights of Labor's conception of an inclusive unionism embracing all wageworkers regardless of craft or skill influenced the American Railway Union in the early 1890's; the conception reappeared without the middle class radical politics in the industrial unionism of the American Labor Union and its successor, the Industrial Workers of the World. Many of the political reforms urged by the order were subsequently enacted into law. It discussed workmen's compensation; the income tax; factory laws; safety in mines; the weekly payment of wages in lawful money; labor exchanges for the distribution of the unemployed; postal savings; housing; social insurance; proper control of immigration; convict competition with law abiding citizens; the recognition of women in industry and provision for equal pay for equal work; the incorporation of trade unions; legislation fostering the voluntary arbitration of disputes between capital and labor; labor bureaus in the states; a national labor department; adult education by means of libraries, lyceums and study courses; and a general eight-hour day to provide leisure for the improvement of the mind. The order represented a continuous democratic criticism and an effort at economic and political planning which would, it thought, transcend "decisions now made in industry, in the workshops and factories, in the mines and mills, in the commercial establishments, on the railroads and in the counting-rooms."

MARY R. BEARD

See: LABOR MOVEMENT; TRADE UNIONS; AMERICAN FEDERATION OF LABOR; DUAL UNIONISM; INDUSTRIAL WORKERS OF THE WORLD; PRODUCERS' COOPERATION.

Consult: Ware, Norman J., *The Labor Movement in the United States, 1860-1895* (New York 1929) p. 18-373; Commons, J. R., and associates, *History of Labour in the United States*, 2 vols. (New York 1918) vol. II; Ely, R. T., *The Labor Movement in America* (new ed. New York 1905); Sartorius von Waltershausen, August, *Die nordamerikanischen Gewerkschaften* (Berlin 1886); Crane, R. T., "The Knights of Labor Movement in Baltimore" in Johns Hopkins University, *Circulars*, vol. xxii (Baltimore 1903) p. 39; Kirk, William, "The Knights of Labor and the American Federation of Labor" in *Studies in American Trade Unionism*, ed. by J. H. Hollander and G. E. Barnett (New York 1906) ch. xii.

SOURCE MATERIAL: Knights of Labor of America,

*Proceedings*, 30 vols. (Philadelphia 1878-1913), and *Journal*, 39 vols. (Washington 1880-1918), under changing titles, sometimes *The Journal of United Labor*; *Knights of Labor Illustrated*. "Adelphon Kruptos." *The Full, Illustrated Ritual, Including the "Unwritten Work" and an Historical Sketch of the Order* (Chicago 1886); *Decisions of the General Master Workman*, nos. 1-11 (Philadelphia 1887-90); Beaumont, Ralph, *A Lecture on the Declaration of Principles of the Knights of Labor* (Cincinnati 1887); Powderly, T. V., *Thirty Years of Labor* (rev. ed. Philadelphia 1890); Buchanan, Joseph Ray, *The Story of a Labor Agitator* (New York 1903); *The Labor Movement; the Problem of To-day*, ed. by G. E. McNeill (New York 1890); *People*, vols. 1-vi (New York 1891-96), official organ of the Socialist Labor party.

KNIGHTS OF ST. CRISPIN. See LABOR MOVEMENT; LEATHER INDUSTRY.

KNOW NOTHING PARTY. See PARTIES, POLITICAL, section on UNITED STATES.

KNOWLES, LILIAN CHARLOTTE ANNE (Tomn) (1870-1926), English economic historian. Mrs. Knowles received her training as an economic historian at Cambridge under William Cunningham, whom she assisted with the second part of the third edition of his *Growth of English Industry and Commerce* (2 vols., London 1903). In 1904 she began teaching modern economic history at the London School of Economics and Political Science; in 1907 she was given the title of reader in economic history and in 1921 that of professor of economic history in the University of London. From 1920 to 1924 she was dean of the faculty of economics and political science, the first woman dean in the history of the university.

The study of economic history in England owes much to the pioneer work of Mrs. Knowles. When she began to lecture no other English university offered courses on the nineteenth century economic history of any country except England, and even English economic development after 1850 with the exception of labor history received little attention. She had to build up the subject for herself, and her grasp of original sources and power of combining exact detail with vigorous and significant generalization is shown in her books. But her real *métier* was never that of a writer. It was many years before she began to remodel her lecture courses into textbooks and she lived to finish only two volumes, the others being completed by her husband and a pupil after her death. The fruits of her work are to be sought as much in the books of her

students as in her own, and it was as a teacher that she chiefly advanced her subject and made her mark upon generations of students drawn from all parts of the world. She had a personality of remarkable force and vitality, compact of learning, enthusiasm, prejudice and wit, and she was undoubtedly one of the greatest teachers of her time.

#### EILEEN POWER

*Works:* *The Industrial and Commercial Revolutions in Great Britain during the Nineteenth Century*, London School of Economics and Political Science, Studies, no. 61 (London 1921); *The Economic Development of the British Overseas Empire*, London School of Economics and Political Science, Studies, nos. 76 and 103, 2 vols. (London 1924-30); *Economic Development in the Nineteenth Century: France, Germany, Russia and the United States* (London 1932).

*Consult:* Knowles, Charles M., "Professor Lilian Knowles" in vol. 11 of Mrs. Knowles' *Economic Development of the British Overseas Empire*, p. vii-xxii; Gregory, T. E., in *Economic Journal*, vol. xxxvi (1926) 317-20; Beveridge, W. H., and Wallas, G., in *Economica*, vol. vi (1926) 119-22.

KNOWLTON, CHARLES (1800-50), American birth control pioneer. With Robert Dale Owen, Knowlton founded the American birth control movement and influenced American and British social life through the promotion of the institution of voluntary parenthood. Knowlton was a physician and a self-taught freethinker, who came into conflict with the Massachusetts courts for publishing his *Fruits of Philosophy* (New York 1832). Reissued soon afterward in England, the treatise had a limited circulation until it became the center of the prosecution of Charles Bradlaugh and Annie Besant. In 1877 a court decision for the defendants did much to vindicate the legal right to disseminate contraceptive information. The publicity attending the prosecution for publishing Knowlton's book resulted, in subsequent years, in the distribution of several million birth control tracts with a consequent decline in the birth rate. The trial created a market for more effective methods of control and paved the way for specialized clinics under medical supervision.

#### NORMAN E. HIMES

*Consult:* Himes, Norman E., "Charles Knowlton's Revolutionary Influence on the English Birth Rate" in *New England Journal of Medicine*, vol. cxcix (1928) 461-65.

KNOX, JOHN (1506-72), leader of the Scottish Reformation. As reformer, historian and publicist Knox left a deep impression on the six-

teenth and seventeenth centuries. His intimate association during his early years with the Scottish reformer George Wishart carried him gradually in the direction of Calvinism. Involved in the rebellious movement of protest against Wishart's martyrdom, he was disciplined by the French authorities who controlled his native land. After nineteen months in the galleys he was set free in England, where he preached with distinction as a minister of the Church of England until the accession of Mary in 1554. Years of exile on the continent increased his restless desire to unite Scotland and England in a solid front against the growing Roman Catholic threat of France and Spain, but neither from Calvin in Geneva nor from Bullinger in Zurich was he able to elicit unequivocal advice as to the propriety of rising against the tyranny of Mary Tudor in England and of Marie of Guise, French regent of Scotland. When in 1559 he returned to Scotland, the Reformation there had entered upon a new phase. Based on principles outlined by Knox in epistles forwarded from Dieppe, it was now committed in open repudiation of the prevailing tenets of orthodox Calvinism to a campaign of active resistance against idolatrous rulers in church and state. Under the vehement leadership of Knox Scotland became the crucial salient in the fast culminating struggle between Protestant and Roman Catholic forces in Europe. In answer to Knox' repeated assurances of a revolution in Scottish sentiment in favor of England Lord Cecil sent in July, 1560, an armed body, which drove the French from Scotland. During the remaining ten years of his life Knox devoted himself to inaugurating and consolidating the Calvinistic regime in Scotland; and in his zeal to disseminate the new truths he outlined a comprehensive system of education, which unfortunately was too far in advance of his age.

Throughout his writings, in his tendentious *History of the Reformation* (London 1587) as well as in his occasional pamphlets, Knox is preoccupied almost exclusively with the fortunes of the Calvinistic faith and with the immediate factors determining its progress. Engrossed in blasting idolatry whatever its form, he was not deterred by juristic subtleties from shattering the immunity of kings, which Luther and Calvin had left standing. In his efforts to provide a theoretical justification for his pioneer challenge he formulated, although with no pretensions to a formal system, broader principles of social contract and popular sovereignty. These inci-

dental principles may be interpreted as echoes of familiar mediaeval doctrines which he and Buchanan had absorbed at the feet of their early Catholic teacher, John Major, or possibly as restatements of the principles and procedure outlined by the later Lutherans. Although his writings anticipate more nearly than do the intervening works of the French and Spanish monarchomachs the fully developed rationalism of seventeenth and eighteenth century contract and natural law theories they are essentially occasional and polemic, deriving their importance rather from the accompanying historical movement and from the fact that they constitute with one or two minor exceptions the earliest examples of a type of politico-theological pamphleteering which during the succeeding century blasted in piecemeal fashion the foundations of royal absolutism.

ROBERT H. MURRAY

*Works:* *The Works of John Knox*, collected and ed. by David Laing, 6 vols. (Edinburgh 1846-64).

*Consult:* Cowan, H., *John Knox, the Hero of the Scottish Reformation* (New York 1905); Lindsay, T. M., *A History of the Reformation*, 2 vols. (New York 1928) vol. ii, ch. vi; Allen, J. W., *A History of Political Thought in the Sixteenth Century* (London 1928) ch. vi; Murray, R. H., *The Political Consequences of the Reformation* (London 1926) p. 119-22; Troeltsch, E. D., *Die Soziallehren der christlichen Kirchen und Gruppen*, *Gesammelte Schriften*, vol. i (3rd ed. Tübingen 1923) tr. by Olive Wyon, 2 vols. (London 1931) vol. ii, p. 632-34; Wolzendorff, K., *Staatsrecht und Naturrecht in der Lehre vom Widerstandsrecht des Volkes gegen rechtswidrige Ausübung der Staatsgewalt*, *Untersuchungen zur deutschen Staats- und Rechtsgeschichte*, vol. cxxvi (Breslau 1916) p. 192-94.

KOCH, ROBERT (1843-1910), German medical scientist. Koch came under the influence of Jakob Henle at the University of Göttingen, where in 1866 he was given his degree. In 1872 he became district physician at Wollstein, supplementing his medical practise by microscopic studies. He first sought the cause of anthrax among cattle and in 1876 made his epoch making demonstration of the complete life history and sporulation of the anthrax bacillus. With full mastery of the new microscopic methods, which he did much to perfect, he then worked out the aetiology of traumatic infectious diseases. In 1880 he was appointed to the Reichsgesundheitsamt (imperial health department), which with the further development of his methods of research by means of plate cultures soon became the leading observatory of contagious diseases in the world. When announcing the discovery of

the tubercle bacillus by special culture and staining techniques in 1882 he set forth the methods of establishing the pathogenic character of a microorganism which have come to be known as "Koch's postulates." In 1883, when he went with his pupils on an official German expedition to study cholera in Egypt and India, he discovered the cholera vibrio and the ways in which it is transmitted; he also found the microorganisms of infectious conjunctivitis. In April, 1885, he became professor of hygiene and bacteriology at the University of Berlin; and in the laboratories of this institution in addition to his ceaseless research in tuberculosis he directed attention to the problems of general hygiene. In 1890 he announced tuberculin as a possible remedy for tuberculosis in its early stages; the claim has not been entirely substantiated, but tuberculin has proved a reliable means of diagnosis. The Institut für Infektionskrankheiten was founded for him in Berlin in 1891 and it remained under his direction until 1904, attracting many of the most famous bacteriologists of the period. Koch assisted in the campaign against cholera in Hamburg, showed how water borne epidemics could be prevented by proper filtration, devised a method of preventive inoculation of rinderpest in South Africa and made significant studies of Texas fever, black water fever, tropical malaria, surra, the plague, leprosy, Rhodesian red water fever, horse sickness, trypanosomiasis and recurrent fever in German East Africa. The methods which he established for the control of typhoid have been widely adopted.

By virtue of his original contributions in the campaign against epidemics and his formulation of methods which enabled others to make important medical discoveries Koch must be considered as one of the greatest public benefactors of all times.

KARL SUDHOFF

*Consult:* Fischer, Bernhard, in *Deutsche Rundschau*, vol. cxlv (1910) 42-69; Wessel, Karl, *Robert Koch; eine biographische Studie* (Berlin 1912); Garrison, F. H., *An Introduction to the History of Medicine* (4th ed. Philadelphia 1929) p. 578-80; Sigerist, H. E., *Einführung in die Medizin* (Leipzig 1931), tr. by M. G. Boise as *Man and Medicine* (New York 1932) p. 202-07; Ford, W. W., "The Life and Work of Robert Koch" in Johns Hopkins Hospital, *Bulletin*, vol. xxii (1911) 415-25.

KOGĂLNICEANU, MICHAEL (1817-91), Rumanian statesman, historian and social reformer. Kogălniceanu was born in Moldavia and pursued his studies first at Jassy and later at

Lunéville and at Berlin, where he completed his "Románische oder wallachische Sprache und Litteratur" in *Magasin für die Literatur des Auslandes*, vol. ii (1837) nos. viii-x, his *Esquisse sur l'histoire, les moeurs et la langue des Tziganes* (Berlin 1837) and his *Histoire de la Dacie, des valaques transdanubiens et de la Valachie, 1241-1792* (Berlin 1837, 2nd ed. 1854). Upon his return to Moldavia in 1838 he plunged with enthusiastic energy into the political arena. Throughout his entire political career Kogălniceanu strove to bring about a fusion of the two autonomous principalities of Moldavia and Wallachia into a united political state. He took an active part in the election of Alexander Cuza as ruling prince of the united principalities and in the coup d'état of 1864, which put an end to Turkish domination.

As head of Cuza's cabinet Kogălniceanu modified the criminal code by abolishing the death penalty and by reducing considerably the life term imprisonment of the criminal. He changed and consolidated the political administration of the country by creating in each regional district a departmental or county council to advise the prefect on all matters pertaining to administration and social reform, by giving each municipality local autonomy to pursue its economic evolution and by secularizing the Greek monasteries and bringing them under the authority of the Rumanian Greek Orthodox church. His electoral law of July 14, 1864, advocating the right to universal manhood suffrage was defeated by the opposition, but he succeeded in passing his agrarian law of August 26, 1864, which extended the franchise to the property holding peasant class, through his efforts newly liberated from servitude, tithes and feudal privileges of the landowning class. By the law of 1864, which made primary public education compulsory, he aimed also at making the vote an intelligent tool in the hands of the peasantry.

Kogălniceanu served as minister of the interior from 1868 to 1871 in Jean Bratianu's cabinet, from 1877 to 1878 as minister of foreign affairs and again as minister of the interior from 1879 to 1880. With paramount diplomatic skill he brought about the parliamentary adoption of the long disputed equality of civil rights of all citizens irrespective of their religious or racial differences and promulgated the law of naturalization, whereby foreigners were enabled to protect their right to private ownership of land and real estate. From 1880 to 1881 he was minister plenipotentiary at Paris, where he was

influential in effecting the recognition by the Great Powers of the kingdom of the united principalities with Charles I of Hohenzollern-Sigmaringen as ruler.

Kogălniceanu's influence on Rumanian culture was as important as his political achievements. He was professor of history at the Academia Mihailiana at Jassy, editor of numerous literary and scientific periodicals, founder of the National Theater at Bucharest and of the first Rumanian university, established at Jassy in 1860. His greatest literary contribution is undoubtedly his excellently documented three volumes of *Letopiseștile țării Moldovei* (Chronicles of Moldavia, 3 vols., Jassy 1845-52, 2nd ed. Bucharest 1872-74; abridged translation in French as *Fragments tirés des chroniques moldaves et valaques*, 2 vols., Jassy 1845), in which he traces the intricate political history of Rumania in its close relation to the social, economic and cultural evolution of the country; this work constitutes the first important history of Rumania before the works of Xenopol and Jorga.

CHRISTINE GALITZI

*Consult:* Dragnea, R., *Mihail Kogălniceanu* (Cluj 1921), Iorga, N., *Mihail Kogălniceanu* (Bucharest 1920); Oneul, D., and Iorga, N., in *Academia Română, Analele*, vol. xli (1920-21) 193-221, 221-31; Xenopol, A. D., *Michail Kogălniceanu* (Bucharest 1895); Damé, F., *Histoire de la Roumanie contemporaine* (Paris 1900).

KOHLER, JOSEPH (1849-1919), German jurist. Kohler became professor of law at Würzburg in 1878 and in 1888 was appointed to the University of Berlin, where he remained until his death. His versatility was amazing. He left numerous works in almost every branch of the law and was a dilettante in poetry, music and art. As a jurist he concentrated especially upon universal legal history and the philosophy of law but he made considerable contributions in other fields as well. He was a pioneer especially in the law of immaterial rights—the law of patents, copyright and trademarks.

Kohler sought in his philosophy of law an underlying unity for his highly diverse activity. He was the acknowledged leader of the neo-Hegelian school. Like most members of this school he retained only the evolutionary and pantheistic tendencies of Hegelianism and discarded almost completely the Hegelian dialectic. He did not see in the history of humanity the unfolding of the idea of reason or regard the existent as necessarily right, but he satisfied his own fundamental need for idealism by seeking to

learn from experience the law of universal evolution in human "culture," a term which he used in the German sense of the control of nature by science and art. Thus law can be understood only as part of the whole culture of a people. As a social product which changes from age to age it must be studied with the aid of history and ethnology.

Such a philosophy did not represent so much a system as a justification of a Faustian urge to comprehend all knowledge. Although it was valuable in its time as a reaction, on the one hand, against the metaphysical tendencies of the preceding generation, and, on the other, against the barren historicism of the prevailing historical school neo-Hegelianism was vitiated by the high degree of relativity which its tenets encouraged. It is not always clear to what extent the necessity for conscious effort in the adaptation of institutions is recognized by Kohler, and although he perceived a rational purpose in the universe he often seemed to admit the irrationality of particular phenomena. Thus the positions he actually took toward various juristic problems tended to be eclectic. He was opposed to the fundamental theory of the sociological school in criminal law but he accepted nevertheless a great part of its program of prevention. In the World War he saw the debacle of positivism in international law. Indeed toward the end of his life he was preoccupied with the Spanish natural law theorists of the sixteenth century and the philosophy of scholasticism.

During his lifetime Kohler was regarded by some as the greatest of living jurists while others consider him hardly more than an assiduous compiler of an almost endless series of monographs. In the last analysis his reputation must rest upon his achievements as a legal historian and ethnologist. As a legal historian, however, his work often suffers from his great reliance upon intuition. He is accused by Dahm of having treated six centuries of development in mediaeval Italian statutes as a static period of almost changeless culture. In his work in ethnological jurisprudence, in which he carried on the labor of Post, although he was of course dominated by the concept of unilinear evolution, he has been granted praise by anthropologists for his treatment of kinship terminologies.

WILLIAM SEAGLE

Consult: Kohler, Arthur, *Josef Kohler—Bibliographie* (Berlin 1931).

KOLLÁR, JAN (1793–1852), Czechoslovakian poet and nationalist. Kollár was born in Slovakia and when still a very young man came under the influence of the Slavic ideas of the Czech national leader, Josef Jungmann. During his studies at the University of Jena he was impassioned partly by the romantic German nationalism, partly by the remains of ancient Slavic settlements in Saxony; later in his gigantic sonnet cycle, *Slávy dcera* (Daughter of Slava, 2 vols., Pest 1824; 2nd ed. 1832), he contrasted pan-Germanism with pan-Slavism. In this work he made an attempt to overcome the wretched condition of the Czechs and Slovaks, who were menaced by the Hapsburgs and Germanization, seeking inspiration in the record of the great geographical extension of the Slavs in the past, the large Slavic population in his own time and the promise of a brilliant Slavic future. In the spirit of Herder he combined enlightened rationalism with historical romanticism and conceived of the nation as an instrument of humanity; moreover he believed that the regeneration of a united Slav nation would inaugurate a new era in the history of mankind. He opposed the lingual separatism of the Slovaks and in his treatise *Über die litterarische Wechselseitigkeit zwischen den verschiedenen Stämmen und Mundarten der slavischen Nation* (Pest 1837, 2nd ed. 1844) he put forward a practical program calling for the absorption of the four leading Slavic tongues, Russian, Polish, Czech and Serbian, into one Slavic language. Kollár's rhetoric exerted a most powerful and lasting influence on the national renaissance of the Czechs and Slovaks, although the high hopes inspired by him were toned down to some extent by the sobering reaction of Palacký and Havlíček.

EMMANUEL CHALUPNÝ

Consult: Masaryk, T. G., *Česká otázka* (The Czech problem) (new ed. Prague 1924) p. 48–91; Vlček, Jaroslav, *Nové kapitoly z dějin literatury české* (History of Czech literature) (2nd ed. Prague 1918) p. 12–40; Fischel, Alfred, *Der Panславismus bis zum Weltkrieg* (Stuttgart 1919) p. 102–25; Pražák, Albert, in *Slavonic Review*, vol. vi (1927–28) 336–43, 579–92.

KOŁŁATAJ, HUGO (Kollontay) (1750–1812), Polish reformer and publicist. Kołłataj was born in the province of Volhynia and studied theology and philosophy at the University of Cracow and in Rome. Appointed canon of Cracow and member of the Commission for Public Education, he reorganized the antiquated educational system of the University of Cracow. He soon turned his attention to the constitutional problems which

confronted the disintegrating Polish state and became the leading spirit in the work of the Four-Year Sejm (Diet); he is generally regarded as the author of the famous constitution of May 3, 1791. After the fall of Poland Kołłątaj was imprisoned first in Austria and, after a brief interval of freedom, in Russia. On his release he returned to Warsaw, where he spent the remainder of his life.

Although Kołłątaj was a priest he was a free-thinker and a follower of the principles of Rousseau and the French Revolution; he later became an admirer of Napoleon. For Poland, however, he advocated a constitutional monarchy headed by a hereditary dynasty with a bicameral parliamentary system; this he considered as best suited to the needs of a country weakened by an unruly gentry struggling for power. A physiocrat, he nevertheless regarded the activities of the urban population as productive and favored the creation of a large middle class both as a source of financial strength and as a political balance against the power of the nobility. Besides a single land tax he urged the necessity of other tax measures, primarily for the purpose of strengthening the army as the only bulwark against the encroaching powers of neighboring countries.

ZOFIA DASZYŃSKA-GOLIŃSKA

*Important works:* *Do Stanisława Małachowskiego . . . anonimowa listów kilka* (To St. Małachowski . . . several anonymous letters), 4 vols. (Warsaw 1788-90); *O ustanowieniu i upadku Konstytucji polskiej 3<sup>go</sup> maja 1791*, in collaboration with I. Potocki and F. K. Dmochowski, 2 vols. (Metz 1793), tr. into German by S. B. Linde as *Vom Entstehen und Untergange der polnischen Konstitution von 3<sup>ten</sup> Mai 1791* (Leipzig 1793); *Ni! desperandum* (in Polish) (Leipzig 1808); *Porządek fizyczny-moralny* (The physical and moral order) (Cracow 1810; new ed. by Z. Daszyńska-Golińska, Warsaw 1912); *Rozbiór Krytyczny zasad historii o początkach rodu ludzkiego* (Critical analysis of the principles of history from the beginnings of mankind), 3 vols. (Cracow 1842).

*Consult:* Janik, Michał, *Hugo Kołłątaj* (Lwów 1913); Tokarz, Wacław, *Ostatnie lata Hugona Kołłątaja (1794-1812)* (The last years of Hugo Kołłątaj), 2 vols. (Cracow 1905); Daszyńska-Golińska, Zofia, "Hugo Kołłątaj jako filozof społeczny" (Hugo Kołłątaj as a social philosopher), introduction to her edition of *Porządek . . .* (Warsaw 1912).

KOLPING, ADOLPH (1813-65), German social worker. Kolping, who was originally a journeyman shoemaker, studied theology at Munich, the center of the Catholic romantic movement, and later at Bonn. Upon the completion of his studies he decided to try to improve

the unhappy social condition of his former fellow craftsmen. He founded in 1847 the first Catholic social organization, the Katholischer Gesellenverein. This Catholic journeymen's guild soon spread from the Rhineland through all German speaking countries and today has branches in nearly all European and several American countries. Its membership at the present time includes more than one hundred thousand skilled workers between seventeen and twenty-five years of age organized in about 1400 locals. The main purpose of this organization is to regenerate family life by establishing its local branches on the family principle (the priest-president being spiritual father of the community) and by providing journeymen with a family home. The guild introduced an early form of adult education of a technical character and endeavored by cultural, moral and physical instruction to develop energetic self-help. Kolping held that social regeneration of a class must be preceded by the moral regeneration of its members based on love, and he consciously opposed the rising influence of scientific socialism which looks for the regeneration of mankind through a thorough reorganization of economic and social conditions only. In politics Kolping shared the views of his friend Bishop Ketteler and put forward no independent program of his own.

THEODOR BRAUER

*Consult:* Brauer, Theodor, *Adolf Kolping*, *Klassiker der katholischen Sozialphilosophie*, vol. ii (Freiburg i.Br. 1923); Zimmerman, Karl, "Der Gesellenvater" in *Süddeutsche Monatshefte*, vol. xxvi (1928-29) 170-73; Nattermann, Johannes, *Adolf Kolping als Sozialpädagoge*, *Forschungen zur Geschichte der Philosophie und der Pädagogik*, vol. i, pt. i (Leipzig 1925).

KONARSKI, STANISLAW (1700-73), Polish educational and political reformer. Konarski studied in Rome and Paris and was a disciple of Locke and Montesquieu in theory and of Rollin in the practise of education. He was the first to attempt a reform of the schools of his nation, until then almost wholly under the control of the Jesuits. In his Collegium Nobilium, founded in Warsaw in 1740, he aimed to train future statesmen with full regard to the needs alike of body, mind and spirit. Throughout he employed the scientific method—a novelty of great moment. In the face of bitter opposition he held to his course and finally won over even his foes. It was he more than anyone else who made possible the creation after his death of a national educational commission.

At the same time Konarski addressed himself



to the evils of the Polish constitution. His most important work, *O skutecznym rad sposobie* (On effective counsels) (4 vols., Warsaw 1760-63), contains a withering attack on the institution of the *liberum veto*, which enabled any deputy to bring about a dissolution of the Diet and so paralyze all public business, and an elaborate plan to reform the machinery of state. In this work may be found not a few principles later incorporated in the constitution of May, 1791.

By introducing the French language and literature as a cultural factor in Polish education Konarski paved the way for the spread of rationalism in eastern Europe. As a result he was indicted as a freethinker by fellow Catholics, but he was able to refute the charges.

WILLIAM J. ROSE

Consult: Rose, William J., *Stanislas Konarski* (London 1929).

KOPRULÜ FAMILY, Turkish statesmen. By their extraordinary intelligence and ability they interrupted for a time the rapid decline of the Ottoman Empire. The first of the Koprulu viziers, Mahmad (c. 1583-1661), came of a humble family probably of Albanian origin and rose from menial to honorable posts in the sultan's service. He held office as governor of Damascus, Tripoli and Jerusalem successively and in 1656, when both the internal administration and the foreign prestige of Turkey had apparently collapsed, was appointed grand vizier. Mahmad obtained a free hand in carrying out a policy which he had evidently resolved upon long before. He suppressed rebellion, restored discipline in the civil and military administration and reorganized finances so as to enrich the treasury. Inflexible in purpose, he promptly and liberally rewarded the obedient and efficient while he punished corruption and opposition by instant execution. Within five years there was order in the empire and its reputation abroad had been restored.

Mahmad's son Āhmad (1635-76) was twenty-six when he succeeded his father as grand vizier, an office which he held for fifteen years. He had received a thorough training in law and had served as governor of Erzerum and Damascus. More humane than his father, he continued essentially the same policies. In addition he did a great deal to protect the people from the arbitrary exactions and activities of government officials and improved the position of the Christians and the adherents of other tolerated religions. His military and diplomatic achievements

led to a temporary revival of the empire. Defeated in a battle against the Austrians at Szent Gotthard on the Raab, Āhmad nevertheless concluded a treaty of peace at Vasvár without loss of territory. In 1669 he brought to an end the war with Venice over Crete, which had been going on for twenty-four years, by obtaining possession of the island. He won and lost battles in Poland but finally made an advantageous settlement.

Āhmad's brother Muştáfá (1637-91), an experienced soldier and governor, was appointed to the grand vizierate in 1689. In his short term he regulated taxation, instituted economies, built up the army and revived the navy. He recognized the necessity of lightening the burdens of the Balkan Christian subjects, who were tempted to join the enemies of Turkey, and arranged a fixed poll tax in three grades to replace irregular exactions.

Mahmad's nephew Hüsayn (d. 1702) became grand vizier in 1697 and in that capacity arranged the Peace of Carlowitz (1699), which resulted unavoidably in serious losses of territory. The new vizier followed the policy of his relatives in improving the financial and military system and in his treatment of the Christians, for whom he remitted the poll tax. He was a patron of learning and the arts and built a number of schools. His five years of control repaired considerably the damages of the prolonged war.

Had the Turkish system permitted it, the Köprülü as monarchs of incomparably greater capacity might have displaced the house of Osman and reformed and modernized the country with rapidity. Actually for the most part they revived policies which had been successful but which were fundamentally unsuited to the changed times.

ALBERT H. LYBYER

Consult: Eversley, G. J., and Chirol, V., *The Turkish Empire from 1288 to 1922* (2nd ed. London 1923) ch. xiii; Creasy, E. S., *Turkey*, ed. by A. C. Coolidge and W. H. Clafin, History of Nations series, vol. xiv (rev. ed. Philadelphia 1906) p. 232-73; Ranke, L. von, *Die Osmanen und die spanische Monarchie im 16. und 17. Jahrhundert*, Sammtliche Werke, vol. xxxv-xxxvi (4th ed. Leipzig 1877) p. 74-81, tr. by W. K. Kelly (London 1843).

KOPS, JACOB LEONARD DE BRUIJN. See BRUIJN KOPS, JACOB LEONARD DE.

KORAES, ADAMANTIOS (1748-1833), Greek educator and national leader. Koraes, the son of a merchant, was born on the island of

Chios but at an early age was taken to Smyrna. He studied in Amsterdam and in Montpellier, where he received his doctorate in medicine. In 1788 he came to Paris, where he lived uninterruptedly until his death. His national consciousness was stimulated by the events of the revolutionary period and he was one of those Greeks who under the influence of the bourgeois revolutionary ideology identified national with bourgeois liberty. His familiarity with the literary achievements of the human mind, systematically cultivated since earliest youth, led him under the influence exercised upon him by the example of the French Enlightenment to the realization that the achievement of Greek national freedom must be preceded by a period of intellectual enlightenment. He also aimed to establish a national cultural continuity between the civilization of ancient Hellas and the Greece of his own day and thus devoted himself to the endeavor to accelerate the intellectual renaissance of his compatriots, who were at that time under Turkish rule. Aided by the financial support of the merchants Zosimades he published a series of modern translations of the ancient classics prefaced with introductions in which he developed his views on education and national regeneration. These works were distributed widely throughout Greece and served as the intellectual basis for the Greek national movement.

Korae's activity as a national educator is closely bound up with his philological views. Since the appearance of the Phanariot scholarship there was evident in Greece a tendency to replace the popular language developed in the course of a long evolution by an artificial scholarly language approximating ancient Greek. Korae opposed this archaistic tendency; he did not endorse the popular speech as such but declared himself in favor of refining it. In his polemic against anti-evolutional archaism democratic motives also played a part; this he explicitly acknowledged in maintaining that although the scholars are the legislators of language they are legislators of a "democratic concern" which belongs to all. This view, which gave the struggle over the popular speech the appearance of a social struggle that it retains even today, invests Korae's vision with special significance and marks him as the forerunner of one of the greatest social movements of the new Greece.

PANAJOTIS KANELLOPOULOS

Consult: Therianos, D., *Adamantios Korae* (in Greek), 3 vols. (Trieste 1880-90); Oikonomos, Christos P.,

*Die pädagogischen Anschauungen des Adamantios Korais und ihr Einfluss auf das Schulwesen und das politische Leben Griechenlands* (Leipzig 1908), with a bibliography of works by and about Korae.

KORAN. See SACRED BOOKS.

KORKUNOV, NIKOLAY MIKHAYLOVICH (1853-1904), Russian sociologist and jurist. From 1878 to 1899 Korkunov was professor of constitutional law and theory of law at the University of St. Petersburg. Although he has often been associated with the school of Jhering he was in reality an entirely original thinker; his ideas resemble to a considerable degree those of Duguit, whom he preceded by several decades.

Korkunov firmly and ardently opposed the voluntaristic theory of law and the state introduced by juridical individualism. At the same time he affirmed the impossibility of detaching juridical constructions from the sociological and psychological study of the reality of law. His most original conceptions deal with the structure of public power and of the state. Korkunov held that public power is not a will but an objective product of the collective consciousness of dependence on the part of its subjects. The state moreover is not a juridical person but an objective juridical relationship; it is a complex system of relations between the individuals and officials who in common realize the public power, which serves as object of these relations. Law according to this conception is not a command of the public power but precedes and goes beyond it, since it proceeds from the collective consciousness in a more immediate manner than does the public power itself. One of the most fundamental problems of the theory of law and of the state—here Korkunov profits by the ideas of Krause and Lorenz von Stein—is that of the relationship between the state and society, which is governed by its own extrastate law. The state, however, must predominate over society, for its power is more favorable to individual liberty.

In his definition of law Korkunov sought to unite the conceptions of Kant and Jhering. Law for him is a "delimitation of interests." The idea of a limit is inherent in idealistic individualism as is the idea of interest in positivist sociology. This amalgamation was not the strongest of Korkunov's conceptions, since it was inconsistent with his own point of view. In fact in opposing juridical voluntarism and individualism it is difficult to consider law as a negative limit, just as it is not easy after having allocated law and power to the spontaneous collective consciousness forth-

with to have recourse to the idea of interest.

Fundamentally Korkunov's ideas, which he himself characterized as an expression of "subjectivist realism," occupied an independent position in the conflict between idealism and positivism. He applied the principle successfully in his very original theory of power and the state but he failed in applying it in his definition of law.

GEORGES GURVITCH

*Important works:* *Lektsii po obshchey teorii prava* (St. Petersburg 1886, 8th ed. 1908), tr. by W. G. Hastings as *General Theory of Law* (2nd ed. New York 1922); *Obshchestvennoe znachenie prava* (The social significance of law) (St. Petersburg 1890); *Sravnitelny ocherk gosudarstvennogo prava inostrannykh derzhav* (Comparative constitutional law of foreign states) (St. Petersburg 1890); *Russkoe gosudarstvennoe pravo* (Russian constitutional law), 2 vols. (St. Petersburg 1892-93, 8th ed. 1913); *Ukaz i zakon* (Ukase and statute) (St. Petersburg 1894).

*Consult:* Hecker, J. F., *Russian Sociology* (New York 1915) p. 257-64.

KOROLENKO, VLADIMIR GALAKTIONOVICH (1853-1921), Russian writer and publicist. During his student years in St. Petersburg and Moscow Korolenko was twice exiled for participation in radical activities; and when in 1881 he refused to take a special oath of allegiance to Alexander III he was sent again into exile, this time for three years in Siberia. He had already been occupying himself with writing, and during his stay in Siberia he wrote *Son Makara*, which on its publication in 1885 (tr. by M. Fell in *Makar's Dream and Other Stories*, New York 1916), when he returned to Russia, made him famous throughout the nation. In 1904 at the death of Mikhaylovsky he became editor in chief of *Russkoe bogatstvo* (Russian fortune), a monthly periodical representing the views of the Populist intelligentsia, and he continued in this position until the magazine was suspended in 1918.

Korolenko was one of the greatest masters of Russian literature in his time but he was a profound humanitarian as well as a literary artist. He called himself "a partisan, defending the rights and dignity of man wherever it is possible to do so with the pen." He wrote many stories and several longer works of fiction but his most effective medium was the short sketch for newspaper or magazine. For decades at times of most acute social crisis in places where events of far reaching significance were taking place the "writer Korolenko" appeared without fail. He was a thoughtful and realistic observer and

in his articles he disclosed and interpreted to the Russian public the "true nature of the event." His power as an artist had a far greater effect in awakening radical sympathies than would have been possible had he expressed himself in purely intellectual terms; and it enabled him to continue his crusade against intolerance and injustice despite a rigid censorship. More specifically, his sketches describing the horrors and exploitation by landlords during the famine of 1891 (*V golodny god*, St. Petersburg 1893), exposing the injustice of a ritual murder accusation against half-Christian tribesmen in north-eastern Russia (*Multanskoye zhertvooprinoshenie*) and protesting against the increasing use of capital punishment after the 1905 revolution (*Bitovoe yavlenie*, St. Petersburg 1910) were of profound significance in shaping a new social consciousness in Russia. A belief in non-violent regeneration and an emphasis on the struggle between the government and society rather than on the class struggle are the important elements in Korolenko's social philosophy. His longest work, *Istoria moego sovremennika* (begun in 1906, complete ed. in 5 vols. Moscow 1922; vol. i and part of vol. ii tr. into German by Rosa Luxemburg as *Die Geschichte meines Zeitgenossen*, 2 vols., 2nd ed. Berlin 1919), presents an invaluable picture of Russian life during the late nineteenth and the early twentieth century and abounds in autobiographical material covering several decades.

VLADIMIR ROSENBERG

*Works:* A collected edition prepared by Korolenko appeared in 1914 (9 vols., St. Petersburg); a definitive posthumous edition is still in the course of publication (vols. i-v, vii, viii, xv-xx, xxiv, Kharkov and Poltava 1923-29). Individual works have been translated into almost every language. In general the French translations are better than the English.

*Consult:* V. G. Korolenko, ed. by E. F. Nikitina (Moscow 1928); *Pamyati V. G. Korolenko* (To the memory of Korolenko), ed. by V. A. Miakotin (Moscow 1922); Batushkov, F. D., *V. G. Korolenko kak chelovek i pisatel* (Korolenko as a human being and writer) (Moscow 1922); Haeussler, Eugen, *Vladimir Korolenko und sein Werk* (Königsberg 1930); Umansky, Dmitry, "Vladimir Korolenko" in *Living Age*, vol. cccxiii (1922) 92-99; Savitch, G., "Vladimir Korolenko" in *La revue*, 3rd ser., vol. xli (1903) 665-76; Calderon, G. L., "Korolenko" in *Monthly Review*, vol. iv (1901) no. 12, p. 115-28.

KÖRÖSY DE SZÁNTÓ, JÓZSEF (1844-1906), Hungarian statistician. Körösy was the founder and first director of the municipal statistical bureau in Budapest and professor of statistics at the University of Budapest. His field

of interest was vital statistics, with particular emphasis on mortality and morbidity rates. In measuring the rates of mortality from specific diseases he devised the method of relative intensity based on the calculation of the proportion of deaths from particular diseases to the total deaths within the respective age group. Using this method to calculate the rates of mortality from smallpox among vaccinated and non-vaccinated people he definitely established the effectiveness of vaccination, which had been hotly contested by antivaccinationists. He also investigated statistical regularities in the propagation of typhoid fever and tuberculosis and studied the effect of housing on morbidity and mortality. In compiling general mortality tables Kőrösy devised the use of the individual register, which enabled him to keep the identity of individuals under observation from birth to death and thus to construct mortality tables for specific groups of people. He compiled the first birth tables after those of Halley and was the first to study the effect of the age of parents on the fertility of marriage and the vitality of offspring. He helped to formulate an international nomenclature of professions and causes of death and worked toward an international unification of the methods of census taking. With Koch and Ogle he constructed an international index of mortality, still in use, based on age distribution with Sweden as a base. Kőrösy was aware of the logical limitations of statistical investigation; although he believed in the existence of statistical regularities in the universe of social phenomena as early as the 1870's he looked upon them as rules of inconstant probabilities rather than as laws of absolute validity.

THEODORE SZÉL

*Important works:* *Mittheilungen über individuelle Mortalitäts-Beobachtungen* (Budapest 1876); *Projet d'un recensement du monde* (Paris 1881); *Demologische Beiträge zur Erweiterung der Nalitäts- und Fruchtbarkeitsstatistik, Mortalitäts-Coefficient und Mortalitäts-Index* (Berlin 1892); *Die statistischen Beweise des Impfschutzes* (Budapest 1896); "An Estimate of the Degrees of Legitimate Natality as Derived from a Table of Natality" in *Royal Society of London, Philosophical Transactions*, ser. A., vol. clxxxvi (1895) 781-875.

*Consult:* Szél (Saile), Tivadar Antal, *Kőrösy József hatadsa a statisztika fejlődésére* (Influence of Joseph de Kőrösy on the development of statistics) (Budapest 1927), with a summary in French.

KOŚCIUSZKO, TADEUSZ ANDRZEJ (1746-1817), Polish national leader. Kościuszko, a descendant of Polish-Lithuanian gentry, received his early education at Warsaw and later pur-

sued a course of study at Paris, where he came under the influence of the political and social ideas which culminated in the French Revolution. Impelled by his enthusiasm for liberty he participated as a colonel in the American War of Independence and after his return to Poland attained distinction in the Polish-Russian War of 1792 waged in defense of the constitution of May 3. Two years later, when he was offered the leadership in the insurrection against the encroaching control of Russia in Polish affairs, he assumed the dictatorship and freed the peasantry from personal servitude and in part from statutory labor. The crushing defeat of the Polish army at Maciejowice put an end to Polish independence and with it to Kościuszko's social reforms; he himself was taken prisoner by the Russians. But although his reforms were short lived they had a profound influence upon Polish political thought, and the idea of the emancipation of the peasants has been a part of nearly all subsequent movements for Polish independence.

Set at liberty after the death of Catherine II, Kościuszko went abroad, where he assumed the moral leadership of the Polish émigrés and of the legions fighting in Italy and Germany on the side of republican France against the partitioning powers. He held radical views and was opposed to the consulate and the empire. He refused to participate in the partial reconstruction of his country in the form of the Duchy of Warsaw and demanded from Napoleon the restoration of the historical frontiers of Poland and a liberal constitution; because of this attitude his influence among his countrymen suffered a temporary eclipse. After the downfall of the empire he endeavored to gain the support of European opinion and of the victorious Alexander I for his ideal of an independent Poland; and during the Congress of Vienna, which created the kingdom of Poland, he drew attention to the necessity of improving the lot of Polish peasants. Disappointed in his hopes, he spent the remaining years of his life in retirement in Switzerland. Kościuszko remained the symbol of the Polish aspirations to the status of an independent nation, and the Kościuszko legend has been one of the main forces making for the establishment of national independence and democracy in Poland.

A. M. SKALKOWSKI

*Consult:* Gardner, Monica M., *Kościuszko, a Biography* (London 1920); Korzon, T., *Kościuszko* (in Polish) (2nd ed. Cracow 1906); Sliwiński, Artur, *Pow-*

*stanie kościuszkowskie* (The Kościuszko insurrection) (2nd ed. Warsaw 1920); Próchnik, Adam, *Demokracja kościuszkowska* (The Kościuszko democracy) (Lwów 1920).

KOSSUTH, LAJOS (1802-94), Hungarian statesman, orator and political writer; chief leader of the Hungarian Revolution of 1848-49. Kossuth through his exceptional oratorical gift, magnetic personality and unique power of organization symbolized more than any other man Magyar nationalism, which was at that time intimately connected with liberalism. He came from the poorer nobility; although of Slovak extraction he embraced wholeheartedly Magyar nationalism, which he, like Karl Marx, considered the only real cultural and liberal force in the country. As the delegate of an absent magnate at the Diet he was the founder of Hungarian journalism, editing for the first time a kind of a parliamentary gazette (*Országgyűlési tudósítások*). Embarrassed by his brilliant agitation the Viennese government put him in prison; but his three years' imprisonment, which he devoted to deep studies of English language and literature, contributed still further to his development. After his liberation he became as editor of the *Pesti hírlap* (1841) the strongest publicistic influence of the nation, arousing the distrust and suspicion of the conservatives, who felt in him the spirit of the revolution. Although the Austrian government was successful in breaking his connection with the paper, his influence grew rapidly as a result of his campaign for the abolition of the entail, the elimination of feudal burdens and complete national independence of Hungary. In 1847 he became a member of the Diet and his discourse on March 3, 1848, demanding a constitution not only in Hungary but also in Austria made him a European figure. So overwhelming was his campaign that the court was obliged to cede. A parliamentary government was granted and Count Batthyány gave Kossuth a portfolio in his cabinet. The Viennese reaction, however, did not take these concessions seriously and fomented a general insurrection of the southern Slavs and the Rumanians, who were exasperated by the chauvinistic attitude of Kossuth. War against the imperial forces became inevitable; Batthyány resigned and Kossuth assumed power as president of the Committee of National Defense and later as governor of the country. His success as an army organizer was remarkable, but after notable victories the situation of the Magyar forces became untenable as a result of the intervention of the czar in favor of the de-

posed emperor, Francis Joseph. Kossuth was obliged to flee and was interned by the Turkish government. Liberated in 1851 he made a brilliant campaign for Hungarian independence in England and America. He lived forty-five years in exile, trying to get French, Italian and later Prussian support against the Hapsburgs. But his efforts remained unsuccessful and after the dualist system had been created by Ferenc Deák in 1867 Kossuth realized that his cause was lost, at least for his lifetime. He continued to regard the *Ausgleich* as an impossible system doomed to collapse and set over against it the idea of a Danube confederation, which he championed as the only constitutional framework capable of guaranteeing real independence to Hungary and the other smaller Danubian nations. Although the influence of Kossuth was crushed in Hungary by a pseudo-parliamentarian system, he remained the idol of the peasantry and his moral force is even now a vital factor.

OSCAR JÁSZI

*Works: Iratai* (Works), 13 vols. (Budapest 1880-1911), vols. 1-iii tr. into German by J. Helfy as *Meine Schriften aus der Emigration*, 3 vols. (Pressburg 1880-82), vol. i tr. by F. Jászai as *Memories of My Exile* (London 1880).

*Consult: Irányi, D., and Chassin, C. L., Histoire politique de la révolution de Hongrie 1847-49*, 2 vols. (Paris 1859-60); Jászai, O., *A monarchia jövője: A dualizmus bukása s a dunai egyesült államok* (Budapest 1918), tr. into German as *Der Zusammenbruch des Dualismus und die Zukunft der Donaustaaten* (2nd ed. Vienna 1918); Szabó, E., *Társadalmi és pártarcok a 48-49-es magyar forradalomban* (Vienna 1921); Szekefi, G., *Három nemzedék* (2nd ed. Budapest 1922); Gracza, G., *Kossuth Lajos élete működése* (3rd ed. Budapest 1902); Steier, L., *Gorgey és Kossuth* (Budapest 1924).

KOSTOMAROV, NIKOLAY IVANOVICH (1817-1885), Ukrainian historian, ethnographer and publicist. Kostomarov studied at the University of Kharkov and became professor at the University of Kiev. Arrested in 1847 as a member of a Ukrainian secret political society, the Brotherhood of St. Cyril and of Methodius, he was imprisoned and exiled to Saratov. Beginning in 1859 he taught at the University of St. Petersburg, where he was much loved by the students; but he resigned this post in 1862 for political reasons and was never allowed to resume his academic career, although the University of Kiev and other institutions invited him to occupy their chairs of history.

Kostomarov divided his interest and work between history, especially the history of the Ukraine and phases of Russian history, and eth-

nography. His influence on ethnographical studies of the Slavic world has been great; he insisted on the scientific importance of ethnography and demanded that the historian himself study the life and the customs of the entire people—not only of the ruling classes. He was hostile to the Muscovite autocracy, which he viewed as a degeneration, due to the influence of the Tartar horde, of the original Slavic forms of life of the Great-Russian people; these forms he believed to be preserved in their purest state in the Ukrainian people. Although he was inclined toward a Slavophile romanticism he had, however, a great influence on the democratic and progressive movement not only in the Ukraine but also in Russia. His political ideal was a federation of the Slav republics with a democratic constitution; for each nation he demanded the right to an independent cultural and political development. As a Ukrainian he was especially interested in the defense of the rights of the Ukrainian tongue and in the cultural development of his people; he may be regarded as the leader in Ukrainian life from 1858 to 1880.

M. HRUŠEVSKY

*Works:* *Sobranie sochineny*, 21 vols. (St Petersburg 1903–06), a collection of historical monographs; *Naukovo-publistitsium i polemichni pisanya* (Scientific-publicistic and polemical writings) (Kiev 1928), *Avtobiografiya*, ed. by V. Kotelnikov (Moscow 1922).

*Consult:* *Ukraïnska Akademiya Nauk*, Kiev, *Ukraina* (1925) pt. iii, p. 3–87.

KOVÁCS, GÁBOR (1883–1920), Hungarian economist. After serving as *Privatdozent* at the University of Kolozsvár, Kovács became professor at the University of Debreczen and in 1918 was called by the Károlyi government to the University of Budapest. In his writings he followed essentially the classical tradition but attempted to reformulate the orthodox doctrine in the light of new economic problems which have emerged since the formulation of the classical principles. He disagreed with the historico-ethical school because of its inclusion of extra-economic elements in economic theory; and he opposed marginalism, maintaining that it is based predominantly on the psychology of the consumer and neglects the factors on the supply side. The general acceptance of marginalism despite its basic shortcomings he explained on two grounds: first, because it constituted a welcome relief from the vagueness of the historico-ethical approach; and, second, because it provided orthodox economic theory with a new

rallying point in its struggle against the inroads of Marxism. He was the first economist of academic rank to adopt an unprejudiced position in the treatment of socialist doctrine. Of the post-classical economists Kovács was influenced by Marx and Oppenheimer; the former influenced his distribution theory, the latter his population theory. During the World War Kovács advocated a thoroughgoing agrarian reform and, as a preventive measure for the approaching post-war agrarian crisis, the formation of colonization societies.

RUSZTEM VÁMBÉRY

*Works:* *Az orosz mir-szervezet szocialgazdaságtani értéke* (Socio-economic value of the Russian mir) (Budapest 1904); *A népesedési elmélet újabb fejlődése* (Population theory) (Debreczen 1906); *Társadalmi gazdaságtan* (Social economy) (Budapest 1914); *A közgazdaságtan elemei* (Elements of social economy) (Debreczen 1915, 2nd ed. 1919); *A közgazdaságtan és a világháború* (Social economy and the World War) (Debreczen 1916); *Vér és kenyér* (Blood and bread) (Budapest 1918); *A szocializmus története* (History of modern socialism), ed. by A. Danos (Budapest 1925).

KOVALEVSKY, MAKSIM MAKSIMOVICH (1851–1916), Russian historian, anthropologist and sociologist. Kovalevsky, the son of a prosperous noble, was graduated from the University of Kharkov and completed his training in Paris at the École des Chartes and in England. His early works dealt with the history of late mediaeval and early modern administration in France and England, tracing the limitation of administrative discretion under absolutism by the development of law and judicial institutions. In England he became interested in the origin and history of the village community, a subject much discussed then, and eventually in primitive social organization. After 1877 he was professor of foreign public law and institutional history at the University of Moscow. At this time he made several field trips to study at first hand the Caucasian mountain tribes and published a number of works based on the material he gathered. In 1887, after being dismissed from the university for liberal tendencies, he settled in France. In the following twenty years he published a number of books and articles in French and English, some of them lecture courses delivered at various European and American universities (Stockholm, Oxford, Brussels, Chicago, California) and at the École Supérieure Russe des Sciences Sociales de Paris, which he founded in 1901. During his French residence he completed his two most important works—his study of the origin of modern democracy and his

economic history of Europe. The first traces the development of the doctrines of equality before the law and of popular sovereignty, analyzes the activity of the French Constituent and describes the decay of the aristocratic regime in the Republic of Venice. In this work he maintained that the conception of inalienable individual liberties was of English origin but unlike Jellinek, who saw it fully developed by English dissidents on American soil, Kovalevsky stressed the importance of the pamphlet and tract literature in the mother country, particularly that of the Levellers. The second work stressing agrarian history and, in its German version extending to the eighteenth century, incorporates the results of twenty-five years of effort. In this he held that increase in population density is the principal although not the only factor in economic evolution and corresponding social and cultural change, thus anticipating Coste, Durkheim, Loria and the whole demographic school. Upon his return to Russia during the 1905 revolution, Kovalevsky organized a liberal party of Democratic Reforms (more moderate than the important bourgeois party of Constitutional Democrats), founded a party newspaper and was elected to the first Duma. He resumed teaching, at first at the university and later also in other schools in St. Petersburg, and in 1907 was elected as university representative to the State Council, Russia's second chamber, where he was the leader of the very small liberal minority.

Unlike many Russian scholars who were influenced by German philosophy and jurisprudence Kovalevsky was a positivist in the manner of Comte and Harrison, a Spencerian evolutionist and a staunch adherent of Maine's comparative historical method. His strength lay in synthesis and generalizations, of which his mind was unusually fertile; although he was an industrious student of archive material he has often been criticized for insufficient attention to factual detail. He exercised considerable influence in all of the disciplines in which he worked—history of law, political theory and economic institutions, sociology, anthropology—but he left no school.

#### E. SPEKTORSKI

*Important works:* *Obshchestvennyy stroi Anglii v kontse srednikh vekov* (Social organization of England at the end of the Middle Ages) (Moscow 1880); *Sovremennyy obichay i drevnyy zakon. Obichnoye pravo osselten* (Moscow 1886), tr. into French as *Coutume contemporaine et loi ancienne: droit coutumier osselten* (Paris 1893); *Tableau des origines et de l'évolution de la*

*famille et de la propriété* (Stockholm 1890); *Modern Customs and Ancient Laws of Russia* (London 1891); *Proiskhozhdeniye sovremennoy demokratsii* (Origin of modern democracy), 4 vols. (Moscow 1895–97; 3rd rev. ed. of vol. 1, St. Petersburg 1912), vol. 1 tr. into French as *La France économique et sociale à la veille de la Révolution*, 2 vols. (Paris 1909–11), and vol. iv tr. into French as *La fin d'une aristocratie* (Turin 1901); *Le régime économique de la Russie* (Paris 1898); *Russian Political Institutions* (Chicago 1902); *Ekonomicheskyy rost Evrope do vozniknoveniya kapitalisticheskogo khozyaystva*, 3 vols. (Moscow 1898–1900), enlarged German version as *Die ökonomische Entwicklung Europas bis zum Beginn der kapitalistischen Wirtschaftsform*, 7 vols. (Berlin 1901–14); *Sovremennyye sotsiologii* (Contemporary sociologists) (St. Petersburg 1905); *Ot pryamogo narodopravstva k predstavitelnomu i ot patriarkhalnoy monarkhii k parlamentarizmu* (From direct to representative democracy and from patriarchal monarchy to parliamentarism), 3 vols. (Moscow 1906); *Sotsiologiya* (Sociology), 2 vols. (St. Petersburg 1910).

*Consult:* Ivanovsky, I. A., in Russia, *Ministerstvo Narodnago Prosveshcheniya, Zhurnal* (1916) no. 12, p. 102–24; Posner, S., in *Revue historique*, vol. cxxii (1916) 236–39; Worms, René, in *Revue internationale de sociologie*, vol. xxiv (1916) 257–63; Gurtwitsch, G., "Übersicht der neueren rechtsphilosophischen Literatur in Russland" in *Philosophie und Recht*, vol. II (1922–23); Sorokin, P., *Contemporary Sociological Theories* (New York 1928) ch. vii.

KRAEMER, ADOLF (1832–1910), German-Swiss agricultural economist. Kraemer is considered the father of agricultural cooperation in Switzerland. After teaching agricultural economics for many years in various German institutions he became secretary general of the Union of Agricultural Societies in the Grand Duchy of Hesse. In 1871 he was appointed director of the newly founded agricultural department of the Federal Polytechnic in Zurich, a position which he held until his resignation in 1905. A few years after his appointment he started a campaign for agricultural cooperation and aided actively in the formation of agricultural cooperatives and of the Union Suisse des Paysans (Schweizerischer Bauernverband) in 1897. He also advocated the development of supply societies into distributive societies. His department at the Polytechnic, the success of which was mainly due to his teaching and administrative work, became a center for the dissemination of agricultural science in a form most beneficial to working farmers and much of his writing had the same end in view. His practical conception of agricultural economics led Kraemer to emphasize farm accounting and animal husbandry (especially cattle raising) as well as to encourage the formation of agricultural research institutes. He took a prominent part in

the framing in 1884 and the revision in 1893 of the Swiss federal law for the encouragement of agriculture. His scientific works on agriculture are most important in their special fields.

ERNST LAUR

KRAEPELIN, EMIL (1856–1926), German psychiatrist. Kraepelin, who studied psychology under Wundt and psychiatry under Rinecker and Gudden, became in 1886 professor of psychiatry in Dorpat; from 1891 to 1903 he held a similar position at Heidelberg and until 1922 in Munich, where he founded the institute for psychiatric research to which he devoted himself until his death. To this institute Kraepelin drew leading men of all the special disciplines bearing on psychiatry and psychopathology and thus furthered the progress of these sciences.

Kraepelin's most significant work was on the classification of the functional psychoses, the symptomatic aspects of which had previously been misunderstood and haphazardly classified. As a result it had been entirely impossible to develop the field of psychopathology, to make general prognoses with reference to course and issue of the diseases, to give general lines of direction of treatment and to collect necessary materials for the study of heredity. Especially through his establishment of the categories of manic depressive insanity and dementia praecox, or schizophrenia, Kraepelin provided a firm groundwork from which research could make and has made further fruitful progress, although his classifications are being modified as evidence accumulates. His experimental work was concerned especially with the psychic effects of toxins. In 1896 he founded the series *Psychologische Arbeiten*, which has been continued by his disciples. His early work on the indeterminate sentence gave him rank among criminologists. He was also prominent in the fight against alcohol in Germany.

EUGEN BLEULER

*Important works:* *Die Abschaffung des Strafmasses* (Stuttgart 1880); *Psychiatrie* (Leipzig 1883; 8th ed., 4 vols., 1909–15; 9th ed. with J. Lange, vols. i–ii, 1927), 7th ed. tr. by A. R. Diefendorf (New York 1907), and vols. iii–iv of 8th ed. tr. by R. M. Barclay as *Manic-depressive Insanity and Paranoia* (Edinburgh 1921). *Consult:* Wirth, W., "Emil Kraepelin zum Gedächtnis" in *Archiv für die gesamte Psychologie*, vol. lviii (1927) i–xxxii.

KRAUS, CHRISTIAN JACOB (1753–1807), German economist. Kraus' intellectual development was decisively influenced by Immanuel

Kant, who was his teacher and later his colleague when after 1781 he served as professor of practical philosophy at the University of Königsberg. His studies embraced philosophy, mathematics, the classical languages, history and politics; it was not until 1790 that he made economic science his chief interest. Kraus had been well grounded in the ideas of the Scottish moralists; he had also made the attempt to connect logically the principle of the categorical imperative with the concepts of sympathy and conscience of the "impartial observer." He discerned the intellectual relationship which existed between the doctrines of Hume, whose essays he translated into German, and Adam Smith's concept of a harmony of interests resting on economic freedom. Out of his admiration for the English constitution, for freedom and for the encouragement of free economic competition arose his efforts for the realization of these ideals in Prussia, which was then governed almost entirely according to the feudal system. Feeble health prevented Kraus from publishing extensively. His writings comprise only a few short treatises advocating the introduction of freedom of industry and the abolition of the guild system; the suppression of monopoly; the abolition of serfdom, of feudal dues and of the privileges of the nobility; the free division, sale and transmission of property; free trade and deliverance from governmental paternalism. He achieved his great success as an academic teacher through his lectures (first published after his death), which were entirely in the spirit of Adam Smith and by means of which he brought hundreds of auditors into contact with the ideas of economic freedom, especially those officials who were later appointed to participate in the execution of the reforms of the ministers Stein and Hardenberg and to make possible the transformation of Prussia from a feudal state to a modern industrial state.

KARL PRIBRAM

*Works:* *Staatswirtschaft*, ed. by Hans von Auerswald, 5 vols. (Königsberg 1808–11); *Vermischte Schriften*, ed. by Hans von Auerswald and J. F. Herbart, 8 vols. (Königsberg 1808–19).

*Consult:* Voigt, J., "Das Leben des Professors C. J. Kraus" in Kraus' *Vermischte Schriften*, vol. viii; Roscher, Wilhelm, *Geschichte der Nationalökonomik in Deutschland* (Munich 1874) p. 608–15; Krause, G., *Beiträge zum Leben von C. J. Kraus* (Königsberg 1881); Kühn, E., *Der Staatswirtschaftslehrer C. J. Kraus und seine Beziehung zu Adam Smith* (Königsberg 1902); Milkowski, Fritz, "Die Bedeutung von Christian Jakob Kraus für die Geschichte der Volkswirtschaftslehre" in *Schmöllers Jahrbuch*, vol. 1 (1926)



921-61; Hasek, C. W., *The Introduction of Adam Smith's Doctrine into Germany*, Columbia University, Studies in History, Economics and Public Law, no. 261 (New York 1925).

KRAUS, FRANZ XAVER (1840-1901), German Catholic church historian and archaeologist. Kraus was ordained a priest in his native city, Trier, and from 1878 as professor at Freiburg i. Br. was recognized as the leading authority on Christian archaeology. He early approached in France the liberal Catholicism of Lacordaire and Montalembert and later became in Italy a follower of Rosmini. He distinguished between "religious" and "political" Catholicism (ultramontanism); the latter he claimed had been created by the mediaeval popes, had been supported by the Jesuits and had predominated since the Vatican Council of 1870. From this point of view Kraus wrote his *Lehrbuch der Kirchengeschichte* (4 pts., Trier 1872-75; 4th ed. 1896), his *Dante, sein Leben und sein Werk, sein Verhältnis zur Kunst und zur Politik* (Berlin 1897)—in Dante he found the model for his combatant yet orthodox relationship with the church—and his *Cavour, die Erhebung Italiens im neunzehnten Jahrhundert* (Mainz 1902). As a "religious" Catholic Kraus championed freedom of conscience, an independent, purely scientific theology and a modern national state entirely separate from the church. He condemned the aspirations of the Curia for supremacy and the organization of German Catholics into a political party. In the Kulturkampf he sought unsuccessfully to persuade Bismarck to uphold the interests of a purely religious German Catholicism against ultramontanism. In his "Kirchenpolitische Briefe," which he published under the nom de plume of Spectator in the Munich *Allgemeine Zeitung* from 1895 to 1899, he defined as ultramontane those who place the church above religion, confound the pope with the church, attribute worldly laws to the kingdom of God, extort religious conviction by means of physical power and sacrifice the individual conscience to outside authority. A Krausgesellschaft founded after his death for the purpose of promoting a "reform Catholicism" patterned on his ideas soon lost its importance through the antimodernistic measures of Pius x.

WOLFRAM VON DEN STEINEN

*Other important works:* *Geschichte der christlichen Kunst*, 2 vols. (Freiburg i. Br. 1896-1908), completed by Joseph Sauer; *Kunst und Alterthum in Elsass-Lothringen*, 4 vols. (Strasbourg 1876-92); *Real-Encyclopädie der christlichen Alterthümer*, 2 vols. (Frei-

burg i. Br. 1882-86); *Essays*, 2 vols. (Berlin 1896-1901). He also edited *Die christlichen Inschriften der Rheinlande*, 2 vols. (Freiburg i. Br. 1890-94).

*Consult:* Braig, Karl, *Zur Erinnerung an Franz Xaver Kraus* (Freiburg i. Br. 1902); Hauviller, Ernst, *Franz Xaver Kraus* (2nd ed. Munich 1905); Schrors, Heinrich, in *Badische Biographien*, vol. v (Heidelberg 1906) p. 424-42.

KRAUZ-KELLES, BARON KAZIMIERZ (1872-1906), Polish sociologist. Krauz-Kelles studied in Paris, where after 1896 he lectured at the Collège Libre des Sciences Sociales; later he taught at the Institut des Hautes Études in Brussels. He early attracted attention by a lecture delivered at the Sociological Congress convoked by the Institut International de Sociologie in 1894 ("La psychiatrie et la science des idées," *Annales*, vol. i, 1895, p. 253-303). From that time his works were regularly published in the *Annales* of that institute and in the *Revue internationale de sociologie*.

Krauz-Kelles was one of the most prominent theorists and leaders of the Polish Socialist party and an energetic worker for the ideal of Polish independence. His more important works and essays in this field were subsequently collected under the title *Wybór pism politycznych* (Selected political works, Cracow 1907). In his journalistic work he employed many pen names, usually that of Michał Luśnia. His scientific works and essays were posthumously published in incomplete form in two books: *Materyalizm ekonomiczny* (Economic materialism, Cracow 1908) and *Portrety zmarłych socjologów* (Portraits of deceased sociologists, Warsaw 1900). He was at heart an exponent of the materialistic interpretation of history. His manner of presenting that theory, however, was marked by a specific trend, which justifies the assumption that further development would possibly have led him to adopt an attitude fundamentally different from that of the formal school of historical materialism.

LUDWIK KRZYWICKI

*Consult:* Krzywicki, L., Introduction to *Materyalizm ekonomiczny* (Cracow 1908) p. vii-xv.

KREITTMAYR, BARON VON, WIGULÄUS XAVERIUS ALOYSIUS (1705-90), Bavarian jurist and statesman. Kreittmayr's fame rests primarily upon his work as lawmaker for the Bavarian state. German legal disunity made clear in Bavaria as in Prussia in the middle of the eighteenth century the desirability of codification. While in Prussia Samuel von Cocceji, primarily a theorist, wished to bring about through codification an

accompanying reform in the spirit of the Enlightenment, Kreittmayr restricted himself to the exposition of the existing Bavarian law.

The result of his work was the adoption in 1751 of the *Codex juris criminalis bavarici* (criminal law and criminal procedure), in 1753 of the *Codex juris judiciarii bavarici* (civil procedure) and in 1765 of the *Codex maximilianeus bavaricus civilis* (civil law, briefly known as *Landrecht*), all of which he drafted. Although scarcely influenced by the spirit of the Enlightenment and of the law of nature and thus including many antiquated provisions Kreittmayr's codes are notable for their great lucidity in the exposition of traditional law, for their originality in the treatment of many individual questions and for their regard for practical requirements. It is especially said in praise of the *Codex judiciarii* that it resulted in an expedition of the course of civil procedure; of the *Landrecht* that it preserved its intrinsic independence in face of the Roman law and displayed an understanding of the indigenous German law which was extraordinary for that time.

The interpretation of these codes was undertaken in Kreittmayr's best known literary work, his *Anmerkungen*, or commentaries, of which those on the *Landrecht* (5 vols., Munich 1757-68) should be especially mentioned for their intrinsic merit. Kreittmayr intended them to be used in legal instruction in the higher schools; for the same purpose he wrote a *Grundriss der gemeinen und bayerischen Privatrechtsgelehrsamkeit* (Munich 1768). Another of his well known works is *Grundriss des allgemeinen deutschen und bayerischen Staatsrechts* (3 vols., Munich 1769-70).

Thus Kreittmayr not only codified Bavarian law in its several branches but subjected the complete private and public law to scientific redaction—an achievement which at that time could be displayed by no other German state.

EUGEN WOHLHAUPTER

Consult: Eisenhart, in *Allgemeine deutsche Biographie*, vol. xvii (Leipzig 1883) p. 102-15, earlier literature there cited; Bechmann, A., *Der kurbayrische Kanzler Alois Freiherr von Kreittmayr* (Munich 1896); Stützing, R. von, and Landsberg, E., *Geschichte der deutschen Rechtswissenschaft*, 3 vols. (Munich 1880-1910) vol. iii, pt. i, p. 222-27.

KREK, JANEZ (1865-1917), Slovenian popular leader. His stay at the Vienna Augustineum from 1888 to 1892 was the deciding period of his life, for in the Austrian capital he came under the spell of the doctrine of von Vogelsang, the most

significant theorist of Christian Socialism. Returning to Slovenia as professor of theology at the Ljubljana seminary for priests, he set out to improve the economic and social welfare of the sparse, poverty stricken and oppressed Slovenian people. He was instrumental in the founding of workers' professional unions, workers' consumers societies and workers' building cooperatives; he revived commerce by means of producers' cooperatives and especially furthered the organization of all kinds of agricultural cooperation. His ceaseless effort was one of the chief factors which helped to make Slovenia the classic land of cooperation. With equal zeal and basing his activity always on Catholic doctrine he furthered the cultural advance of the Slovenes, combating alcoholism and illiteracy and organizing youth, workers and farmers for purposes of education.

He engaged also in actual political activity in the predominantly Christian Socialist party, which after 1905 called itself Slovenska ljudska Stranka (Slovenian People's party). In 1897, 1907 and 1911 he was elected to the Vienna Reichsrat; after 1900 he was a member of the Landtag of Carniola. In parliament he was always a vigorous advocate of absolute democracy. In his book *Socijalizem* (Socialism, n p. 1901) as well as in his parliamentary speeches he came very near to socialistic lines of thought. He expressly declared himself in favor of a war against capitalism, "the system in which free men, created in God's image, become the slaves of material wealth."

Krek, who was well versed in most of the Slavic languages, sought to destroy the narrow, restricting national community of the southern Slovenes. He favored an alliance with the Catholic Croats and also looked to the orthodox Serbians and Bulgarians, all of whom he considered as members of the one Yugoslav nation. His first hopes for a Yugoslav union through and under the scepter of the Hapsburgs were frustrated by the annexation crisis and the Balkan Wars with all their attendant circumstances. During the World War he organized the Südslawische Klub (Southern Slav Club), the union of the Slovenian deputies in the Reichsrat with the Croatian and Serbian members from Dalmatia. He was the author of the famous declaration of this group on May 30, 1917, which put forward as a minimum demand on the ground of constitutional law and in the name of self-determination the union of the three peoples; the formal phrase "under the scepter of the Haps-

burgs" was included merely to avoid persecution under the high treason clause.

HERMANN WENDEL

*Works:* *Izbrani spisi*, ed. by Ivan Dolenc, 3 vols. (Ljubljana 1923-25).

*Consult:* Wendel, Hermann, *Aus dem südslawischen Risorgimento* (Gotha 1921).

KREMER, BARON ALFRED VON (1828-89), Austrian statesman and historian. After attending the law course at the University of Vienna Kremer devoted himself to the study of Islamic languages. In 1849-50 he traveled in Syria and Egypt and upon his return to Vienna was for a short time professor of vulgar Arabic at the Polytechnic Institute. In 1859 he was appointed Austrian consul at Cairo, in 1870 consul general at Beirut and in 1876 member of the Egyptian National Debt Commission. He was Austrian minister of commerce in 1880-81. On the basis of his historical studies and his experiences as minister Kremer published his much discussed *Die Nationalitätsidee und der Staat* (Vienna 1885), in which he held that a strong political tradition emphasizing the idea of the state must be maintained as a protective measure in states of mixed nationalities; this work was directed especially against the Slavizing and clerical trend in Austrian internal policy.

Kremer was one of the pioneers in the field of Islamic studies and without his invaluable works a realistic, popularized knowledge of Islam would undoubtedly not have been available until much later. His brilliant knowledge of Arabic enabled him to edit Arabic texts and his original writings, which deal for the most part with geography and cultural history, reflect his studies in source material. He was also especially interested in the financial conditions of the Arabs. In his *Geschichte der herrschenden Ideen des Islams* (Leipzig 1868) he traced the development of what he believed to be the leading ideas in Islam: the operative concept of God and the original views of the prophecy in the religious field and also the idea of the state which so deeply influenced political life. This book was the precursor of his *Culturgegeschichtliche Streifzüge auf dem Gebiete des Islams* (Leipzig 1873), which in turn forecast his still unrivaled masterpiece, *Culturgegeschichte des Orients unter den Chalifen* (2 vols., Vienna 1875-77; tr. by S. Khuda Bukhsh, Calcutta 1920), a synthetic work which fully utilized his intensive reading and research. Here Kremer described not only the habits, customs and mode of thought of the Arabs and their in-

tellectual and material achievements but also the rise and fall of the political organism. Despite its inaccuracies it remains a unique study in its field. The papers which Kremer subsequently issued in the publications of the Vienna Academy of Sciences, of which he became a member in 1876, were intended to develop and extend certain aspects of his fundamental work.

FRANZ BABINGER

*Important works:* "Beiträge zur Geographie des nördlichen Syriens" in *Kaiserliche Akademie der Wissenschaften*, Vienna, Philosophisch-historische Classe, *Denkschriften*, vol. III (1852) pt. II, p. 21-45; *Mittelsyrien und Damascus* (Vienna 1853); "Topographie von Damascus" in *Kaiserliche Akademie der Wissenschaften*, Vienna, Philosophisch-historische Classe, *Denkschriften*, vol. V (1854) pt. II, and vol. VI (1855) pt. II; *Aegypten*, 2 vols. (Leipzig 1863); "Studien zur vergleichenden Culturgeschichte" in *Kaiserliche Akademie der Wissenschaften*, Vienna, Philosophisch-historische Classe, *Sitzungsberichte*, vol. CXX (1890) pts. I and VIII.

*Consult:* *Kaiserliche Akademie der Wissenschaften*, Vienna, *Almanach*, vol. XI (1890) 183-88; Pfannmüller, D. G., *Handbuch der Islam-Literatur* (Berlin 1923) p. 38-39, 68, 130, 255-56, 266-69.

KREUGER, IVAR (1880-1932), Swedish financier. After concluding his academic studies Kreuger left Sweden in 1900 and passed the following seven years in the United States, Mexico, South Africa and other countries, where he engaged primarily in engineering. He returned to Sweden in 1907 and founded the construction company of Kreuger and Toll. In 1913 he promoted a combination of Swedish match factories in opposition to another and earlier combination, and four years later he united both in the Swedish Match Company. Within ten years Kreuger had expanded this organization into an international trust, with factories in forty-three countries and control over approximately 80 percent of the world's match supply. The trust consisted of a series of holding companies culminating in the Kreuger and Toll Company, which was converted into a holding and finance company under Kreuger's personal control.

Kreuger was a man of extraordinary organizing and administrative ability. His work resulted in the practical elimination of the competitive struggle in the match industry, first in Sweden and then in the international sphere. In the course of consolidating the world trust he began in 1925 to extend loans to governments (securing the necessary capital mainly in the United States and England) in return for concessions of the public match monopoly—a development

based upon the strained and necessitous character of post-war government finances. In this way he acted as intermediary between countries rich and poor in capital and extended loans of over \$360,000,000 to Poland, Greece, France, Hungary, Yugoslavia, Latvia, Rumania, Germany, Estonia, Turkey, Lithuania, Danzig, Ecuador, Bolivia and Guatemala, mainly to strengthen the match trust but sometimes for other industrial and financial purposes. Thus he constructed a concern of a peculiar type, which has justly been called an economic state, since it negotiated with states as one with equal rights. Although the world match trust was industrially limited in scope—it never employed more than 60,000 workers—Kreuger erected upon its base an extraordinarily intricate and powerful financial structure, which included interests in banks, real estate, timber, pulp, mining, cement and other enterprises many of which had no direct connection with the production and distribution of matches.

At the height of his power Kreuger enjoyed nearly unlimited confidence and credit among financiers impressed by his talents, persuasive manner and "obvious honesty." He was not only considered the most successful and capable of leaders but the creator of a new phase of the capitalistic system. Consequently the disillusionment was all the greater when after his suicide, the result of financial troubles, it came to light that for many years he had falsified accounts, borrowed on the security of fictitious match concessions, forged Italian government bonds, pledged German government bonds twice over as collateral for loans and in general systematically deceived his associates. These manipulations were enveloped in an almost impenetrable secrecy by the complicated array of companies, some of them fictitious, which he organized through the holding company device. As the unusually speculative character of post-war European and American finance had facilitated Kreuger's manipulations, so the financial crisis of 1930-31 strained the resources of an already weakened organization and precipitated its collapse.

WILHELM GROTKOPP

Consult: Sterner, E., *Ivar Kreuger* (Uppsala 1930); Grotkopp, Wilhelm, *Der schwedische Zundholztrust* (Brunswick 1928); Georg, M., *Der Fall Ivar Kreuger* (Berlin 1932); Marcus, Alfred, *Kreuger & Toll als Wirtschaftsstaat und Weltmacht* (Zurich 1932); Deck, J. F., "The Match Stick Colossus" in *Foreign Affairs*, vol. ix (1930-31) 149-56; Mennevee, R., "Monsieur Yvar Kreuger, le trust suédois des allumettes et

Kreuger and Toll" in *Documents politiques, diplomatiques et financiers*, vol. xii (1931) 77-84, 121-33, 250-60, 353-63, 422-39, 747-53, 791-805, 875-87, 932-41; Flynn, J. T., "Kreuger, Another Holding Company Debacle" in *New Republic*, vol. lxxi (1932) 35-38; Winkler, M., "Playing with Matches: the Rise and Fall of Ivar Kreuger" in *Nation*, vol. cxxxiv (1932) 589-91; Barman, T. G., "Ivar Kreuger: His Life and Work" in *Atlantic Monthly*, vol. cl (1932) 238-50; Ehrenburg, Ilya, *Die heiligsten Guter* (Berlin 1931).

KRIŽANIĆ, JURIJ (1617-83), Croatian theologian and political writer. Križanić was one of the first to recognize the feasibility of fusing all Slavs into a single powerful nation based on community of ideas and interests. He looked to Russia as the only Slav power capable of securing to the Slavs an independent and honorable place in the family of great nations. He believed, however, that a cultural and spiritual union must precede political combination. With that in view he attempted to effect a reconciliation between the Russian and the Roman churches in order to remove the most powerful obstacle in the way of political cooperation between the two divisions of the Slav race. After spending many years in Rome he came to Moscow to appeal to the Slav consciousness of the Russians. His mission, however, failed; he was met with suspicion bordering on hostility and exiled to Tobolsk. Križanić's ideas were in advance of his times, for in the seventeenth century religion and nationality were still conceived as inseparable. In Moscow he aroused suspicion because he lent the national idea a religious color; in Rome he did not receive favorable attention because his religious ideal was tinged with nationalistic tendencies. Križanić was a political writer of note. His *Politica* (published as *Russkoe gosudarstvo vo vtoroy polovine XVII veka*, Moscow 1860) contains in addition to illuminating and objective observations on the life of Muscovy in the seventeenth century one of the first formulations of the theory of enlightened absolutism: the sovereign is responsible not only to God but to public opinion as well, and his rule must conform to the fundamental laws of the country. Križanić's economic views were those of contemporary mercantilism. He stressed the positive role of the state in developing the productive forces of the nation and urged state control of foreign trade. He departed from the mercantilists in emphasizing the importance of agriculture, thus anticipating the doctrine of the physiocrats.

E. ŠMURLO

Consult: Jagić, V., *Život i rad Jurja Križanića* (Life and work of J. Križanić) (Zagreb 1917); Valdenberg, V. E.,

*Gosudarstvenniya idei Križanicha* (Political theories of Križanić) (St. Petersburg 1912); Šmurlo, E., "From Križanić to the Slavophiles" in *Slavonic Review*, vol. vi (1927-28) 321-35, and *Jurij Križanić (1618-1683): Panслависта о мисионарѣ*, tr. from Russian ms. by E. Lo Gatto (Rome 1926), and *Le Saint-Siège et l'Orient orthodoxe russe (1609-1654)* (Prague 1928).

KROCHMAL, NACHMAN (1785-1840), leader in the movement of the Jewish *haskalah* (enlightenment) and one of the founders of modern Jewish scholarship. Born in Galicia and brought up in the orthodox Jewish tradition, he nevertheless acquired a deep and extensive knowledge of ancient and modern languages, natural and moral sciences and metaphysics. He steeped himself in mediaeval Jewish religious philosophy and in western philosophy from the period of Spinoza to the close of German idealism, with special interest in the philosophy of history. His doctrines were transmitted largely by oral tradition among a host of disciples and not until his last years did he commit his life's work to writing in his *More neuchei ha-zeman* (Guide to the perplexed of our age), which was first published by Zunz in 1851. Krochmal's starting point was the problem of faith and knowledge, particularly as it concerned Judaism. Religion and philosophy were to him identical, and the God of Jewish monotheism coincided with the mediaeval Aristotelian *causa prima*. In the philosophy of history, where his thought attained its greatest maturity, he distinguished four principles: the impulse to sociability as a formative element of society and state, the idea of natural development, the spirit and the absolute spirit. He accepted the idea of a *Volksgeist*, or spirit of a people, which was derived from Montesquieu; and he held that the individual mind was the product of human society, which expressed this *Volksgeist*. The absolute spirit, on the other hand, was the creator of all history. In his treatment of Jewish history he analyzed the process of development through the scheme of three stages occasionally employed by earlier historians: youth, maturity and decline. He believed, however, that Judaism, as a result of its alliance with the absolute spirit was at present enjoying a new youth after having passed through its stage of decline.

Krochmal, the first secular Jewish historian, is especially noteworthy for his historical understanding and for his ability to relive the periods of the past. He employed his genetical critical method in a masterly fashion as a critic of the

Bible, the *halacha* and the *aggada*. Besides his great influence in these fields of scholarship he affected the thought of various Jewish poets and thinkers in Galicia and Russia.

S. RAWIDOWICZ

*Works:* *Kitbe Rabbi Nachman Krochmal*, in Hebrew, ed. by S. Rawidowicz (Berlin 1924).

*Consult:* Zunz, L., in *Gesammelte Schriften*, vol. ii (Berlin 1876) p. 150-59; Schechter, S., *Studies in Judaism, First Series* (Philadelphia 1896) p. 46-72; Rawidowicz, S., "War Nachman Krochmal Hegelianer?" in Hebrew Union College, *Annual*, vol. v (1928) 535-82, and "Nachman Krochmal als Historiker," in *Festschrift zu Simon Dubnows siebzigsten Geburtstag* (Berlin 1930) p. 57-75, and introduction to his edition of Krochmal's works, with additional bibliography.

KRONVALDS, ATTIS (1837-75), Lettish publicist, educator and nationalist leader. Kronvalds came of a peasant family and studied in Berlin, where he followed the German national movement and studied carefully the conditions of the German peasant class. On his return to Latvia he became active in the young Lettish national movement, which directed its efforts primarily against the supremacy of the privileged Baltic Germans who were allied with the landed aristocracy and the clergy. The movement found its chief support among academicians, teachers, farmers and tradesmen, who organized newspapers, schools and various nationalist societies; of these the most important was the Lettish Society of Riga established in 1868. In 1869 they founded the newspaper called *Baltijas vēstnesis* (Baltic courier). Through his writings in nationalist publications Kronvalds aroused the Letts to an appreciation of the need for national education and a revival of national consciousness, urging the establishment of Lettish high schools and demanding that the Lettish language be taught in all schools. His most important work, *Nationale Bestrebungen* (Dorpat 1872), which discussed all these questions, obtained a wide circulation and placed him among the leaders of the Lettish national renaissance.

M. VALTERS

*Consult:* Kundsinsch, K., *Kronvalds Attis* (Riga 1905); Blanks, Ernst, *Latviešu tautas atmoda* (Riga 1927) p. 127-40; Valters (Valters), M., *Lettland* (Rome 1923).

KROPOTKIN, PRINCE PETR ALEXEYEVICH (1842-1921), Russian scientist, sociologist and anarchist. As an official in Siberia in 1862 Kropotkin made important geographical and anthropological investigations, which led him to conclude that state action was ineffective

while mutual aid was of great importance in the struggle for existence. He thus affirmed solidarity as a factor of progressive evolution in contradiction to the Hobbesian thesis of eminent Darwinists, and opposed to the historians' theory of the constructive value of legal compulsion and state power the idea that the work of ignorant masses through spontaneous cooperation was chiefly responsible for production, construction and progress. From these beginnings he went on to develop his theory of anarchist federalism, which in 1872 brought him into the First International in Switzerland; with the split in that organization he went with the Bakuninist Jura Federation against the Marxist current.

Imprisoned in Russia in 1874 for revolutionary propaganda, he escaped to western Europe in 1876 and thereafter devoted himself to writing on natural sciences and to propaganda which he contributed to various anarchist journals. His writings, translated into many languages, were a main source of the ideology of the anarchist-communist movement. Expelled from Switzerland in 1881, he went to France, where he was imprisoned in 1883 and served a three-year term. After 1886 he lived chiefly in London. He urged French anarchists not to oppose the extension of the military service period, on the grounds that France must defend democracy against German imperialism; and he championed the Allied cause during the World War. He returned to Russia after the February revolution, supported Kerensky and urged a renewed military offensive. After the Bolshevik revolution because of his opposition to proletarian dictatorship he devoted himself only to writing.

Kropotkin sought a scientific foundation for anarchist theory. Modern science, he argued, recognizes in final results the cooperation of the minutest individualities and substitutes for the metaphysical concept of law that of spontaneous equilibrium varying with the variation of factors. To explain historical facts and to solve problems in the social sciences it is necessary to see masses as composed of anonymous individuals and to study the life, conditions and needs of the latter. Prejudice in favor of law, which education fosters, breaks down when we recognize that law is not intrinsic but that society was originally governed by custom and spontaneous solidarity. Law arises when the oppressing tendency triumphs through violence and superstition. Adroitly confusing spontaneously respected moral norms with the sanctification of inequalities law protects privileged usurpers rather than

the rights and liberty of all; the latter are respected only to such degree as the populace can compel respect. Law and the state correspond to a regime of economic exploitation; a regime of equality is incompatible with any government, even delegates and representatives being subject to laws and domination. Capitalism cannot achieve that universal well being which the progressive technical power of production should, despite Malthus, insure. Aiming only at private gain capitalism measures production not by the needs but by the acquisitive capacity of the population.

Kropotkin disapproved of Tolstoyan non-resistance and asceticism as well as of the individualist anarchism of Stirner. Instead of the class struggle Kropotkin urged going "to the people." Revolution should abolish private property and the state. Having destroyed society it should rebuild on the basis of autonomous groups and federations from the simple to the complex, following the tendency already dominant in every field of life and production. All persons, including intellectuals, from twenty to forty-five years old are to perform manual labor, which will become pleasing and voluntary because unrestrained initiative and invention will suppress repugnant and unwholesome work and enable four to five hours daily labor to assure universal bountiful well being. For the principle of wages Kropotkin wished to substitute the principle of needs, of the right to existence and well being for all who cooperate in producing. Each will be the judge of his own needs; the obligation to work will be absolutely spontaneous, not forced.

While his system is often ingenious, Kropotkin leaves many philosophical and practical questions unanswered and frequently contradicts himself. Characterizing courts and prisons as "universities of crime" he held that criminals must be cared for as unfortunates; on the other hand, the rebellious and the drones are to be expelled from the group. Kropotkin never explained how the rise of the oppressive tendency, which along with cooperation he saw as the offspring of social life, could be avoided in an anarchist regime; how the multitude, which, he held, has no clear program and consequently tends to follow a party of action and to be governed by it, could avoid this fate under anarchism; how everything would be organized without organs of government; how communal, regional, national and international groups and federations of production and consumption

would function without delegated and representative authority. The incompleteness of the anarchist program became especially clear after the fall of the czar, when Kropotkin had no plan for "the people" to follow except that of supporting the Kerensky government. The nobility of Kropotkin's inspiration, his honesty in discussion and the sincerity of his conviction evidenced by his whole life are, however, beyond question.

RODOLFO MONDOLFO

*Important works:* *Mutual Aid, a Factor of Evolution* (London 1902, rev. ed. 1904); *La grande révolution, 1789-1793* (Paris 1909), tr. by N. F. Dryhurst (London 1909); *Fields, Factories and Workshops* (Boston 1899, rev. ed. New York 1913); *Russian Literature* (New York 1905), reprinted as *Ideals and Realities in Russian Literature* (New York 1915), *Paroles d'un révolté* (Paris 1885); *In Russian and French Prisons* (London 1887); *La conquête du pain* (Paris 1892, 12th ed. 1913), English translation (London 1913); *The State, Its Part in History* (London 1898); *Memoirs of a Revolutionist* (Boston 1899); *Modern Science and Anarchism* (Philadelphia 1903).

*Consult:* Plekhanov, G. V., *Anarchismus und Sozialismus* (Berlin 1894), tr. by E. A. Aveling (London 1895) ch. vii; Zenker, E. V., *Der Anarchismus* (Jena 1895), English translation (New York 1897); Laurentius, Guido, *Kropotkins Morallehre und deren Beziehungen zu Nietzsches* (Dresden 1896), Zoccoli, E., *L'anarchia* (Turin 1907), Lorulot, André, *Les théories anarchistes* (Paris 1913); Diehl, Karl, *Über Sozialismus, Kommunismus und Anarchismus* (4th-5th eds. Jena 1922-23); *Kropotkin's Revolutionary Pamphlets*, ed. by Roger N. Baldwin (New York 1927), with biographical sketch and partial bibliography.

KRUEGER, PAUL (1840-1926), German jurist. Krueger was a pupil of Keller, the celebrated Romanist and proceduralist, and later became one of the closest collaborators of Theodor Mommsen. He participated in the preparation of Mommsen's great critical edition of the *Corpus juris*, editing the Institutes and the *Codex*. He also collaborated on Mommsen's edition of the Digest and after the latter's death superintended the later impressions; in this work he distinguished himself by evaluating the new interpolation research at its true worth.

Krueger's special field of work was the writings of the jurists. His edition of Gaius, which he prepared in collaboration with the philologist Studemund in 1877, remained the best until 1925, when it was surpassed in part by the edition of Kübler. This background admirably fitted him to write the *Geschichte der Quellen und Literatur des römischen Rechts* (Leipzig 1888, 2nd rev. ed. 1912). Like all his writings it is rather a literary historical survey than an actual history of problems. The problem of interpola-

tion was at that time still unrecognized and thus received no consideration.

His critical edition of the *Codex theodosianus* was pursued by a strange misfortune. After working on it for twenty years, Krueger had almost completed it in 1898; Mommsen persuaded him, however, to transfer his material to the larger work. Krueger undertook another edition of his own in 1923 but it was never completed. Although it does not entirely reach the level of his other work it surpasses Mommsen's edition in many ways.

FRANZ SOMMER

*Consult:* *Die Rechtswissenschaft der Gegenwart in Selbstdarstellungen*, ed. by Hans Planitz, 3 vols. (Leipzig 1924-29) vol. ii, p. 153-69; Stintzing, R. von, and Landsberg, E., *Geschichte der deutschen Rechtswissenschaft*, 3 vols. (Munich 1880-1910) vol. iii, pt. ii, p. 880-82, and notes p. 369-70; Schulz, Fritz, "Paul Krueger" in *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Romanistische Abteilung*, vol. xlvii (1927) ix-xxxix.

KRUEGER, STEPHANUS JOHANNES PAULUS (1825-1904), South African statesman. As a boy Krueger participated in the great trek from Cape Colony—a movement to escape the Anglicization and the native and land policies of British rule—which resulted in the establishment of the Boer republics. In the course of the turbulent history of the early Transvaal he gained recognition as a natural leader of his people, personifying their characteristics of dogged determination, impatience of restraint and devotion to the ideal of a wide, free land. His successful resistance to the British annexation of the Transvaal from 1877 to 1881 led to his election as president of the republic and crystallized his policy. He held that unless South Africa could be united as a Boer nation the Transvaal must be developed on distinctive lines, separated from the British colonies politically and economically and with its social structure based on the traditions of the pioneers of the trek. The doom of this policy was sealed in 1886 by the discovery of gold on the Witwatersrand, which brought into the republic an *uitlander* population, mainly British, outnumbering the Boer burghers. Krueger vigorously resisted the swamping of his state by the alien element. The result, the South African War of 1899 to 1902, marked his failure, but his ideal of South African nationalism survived and has done much to inspire the present day Nationalist party, which, although its leaders have disavowed the republicanism of its earlier years, emphasizes the

political and cultural distinctiveness of the Dutch South African.

JAN H. HOFMEYR

*Consult:* Krüger, Paul, *Lebenserinnerungen*, ed. by A. Schowalter (Munich 1902), tr. by A. Teixeira de Mattos as *The Memoirs of P. Krüger . . . Told by Himself*, 2 vols. (London 1902); Botha, P. R., *Die staatkundige ontwikkeling van die Suid-Afrikaanse Republiek onder Kruger en Leyds* (Amsterdam 1926); Walker, E. A., *A History of South Africa* (London 1928); Hofmeyr, J. H., *South Africa* (London 1931) p. 96-117.

KRUMBACHER, KARL (1856-1909), German Byzantologist. Krumbacher was early attracted to the study of Byzantine civilization by his interest in the phil-Hellenic movement. He studied at Munich and Leipsic and was professor at the University of Munich from 1891 until his death. Although Du Cange had laid the foundations of Byzantine studies in the seventeenth century, it was Krumbacher who revived the interest in this field and created in Europe a center for their advancement. His *Geschichte der byzantinischen Literatur* (Munich 1891, 2nd ed. Munich 1897), an encyclopaedia of Byzantine culture, opened a new world of research by showing that Byzantine civilization was related not only to classical antiquity but also to the mediaeval East and West as well as to the vast Slavic world. In 1892 Krumbacher founded the *Byzantinische Zeitschrift*, the first special organ devoted to Byzantine studies. This periodical, which published articles in all European languages, treated not only political and ecclesiastical history but also various social, economic and intellectual problems. The section devoted to critical bibliography was particularly well presented. Krumbacher was also influential as a teacher; his seminar on mediaeval and modern Greek at the University of Munich attracted students from all over the world.

A. VASILIEV

*Consult:* *Byzantinische Zeitschrift*, vol. xix (1910) 700-08, for a complete list of Krumbacher's works; Dietrich, Karl, in *Biographisches Jahrbuch und deutscher Nekrolog*, vol. xiv (1912) 136-42, with further bibliography.

KRUPP, ALFRED (1812-87), German industrialist. Krupp inherited from his father a small ironworks in Essen, which he developed into the largest metallurgical enterprise in Germany. Although he improved the quality of cast steel to a point where it was superior to the English product, the growth of the Krupp works was exceedingly slow for over twenty years. The Zollverein stimulated industry and commerce in Germany,

especially the building of railroads; Krupp developed improved rails, which brought him considerable business, and for a time railroad material was the main produce of his plant. Krupp early began to manufacture cast steel cannon, but it was not until 1857 that large orders for the new cannon were secured from Prussia and a few foreign countries. He secured a practical monopoly of ordnance supply for the Prussian army, both through the superiority of his product and by the use of personal and political influence. For a time he used inferior material in his cannon while maintaining the same prices; but when some of the cannon split during firing and the Prussian government threatened to withdraw its orders, Krupp used his personal and political connections to maintain his monopoly, now his most profitable business. He developed a new, much improved field artillery. The Krupp artillery was an important factor in the Prussian defeat of France in 1870. After the war Krupp exploited the danger of an invasion by several of the powers to maintain a large demand for ordnance, a policy continued by his successors; the growth of the German army greatly increased Krupp's business, while the fame of Krupp ordnance resulted in many orders by foreign governments.

In addition to ordnance the Krupp works had an extremely diversified output of metal products. The works grew to vast size, constituting an integrated enterprise which utilized principles of both vertical and horizontal combination; this development was accelerated by the enormous industrial expansion of Germany after 1870. Unsatisfactory experiences with his supply of raw materials led Krupp to acquire direct ownership of coal and iron mines; he had a large interest in Spanish iron mines and developed his own fleet of steamers to import the ore. Primarily a technician and industrialist, Krupp underestimated the importance of financial connections; he believed in the self-financing of industry and fought control by the banks. The crisis of 1874 so strained his credit that he almost lost control of his works to the banks, which he opposed; he was compelled to borrow money on oppressive terms—30,000,000 marks at 90 with repayment at 110 and with interest at 5 percent. His situation was, however, relieved by large foreign orders for ordnance and by orders for rails from the United States, where the railroad boom had revived. After Krupp's death the works continued to expand and to dominate the German iron and steel industry.



Krupp was an opponent of both liberalism and socialism. He considered socialism the great enemy and repeatedly warned his workers against agitators. An authoritarian insistent on being "master of his own house," he ruthlessly opposed trade unions and ordered strikes suppressed under all circumstances. "We want only loyal workers," he said, "who are grateful in soul and body that we offer them bread." He created elaborate benefit institutions, including company houses, for a small group of trusted workers, who enjoyed almost the status of officials.

ECKART KEHR

*Consult:* Berdrow, W., *Alfred Krupp*, 2 vols. (2nd ed. Berlin 1927); *Alfred Krupps Briefe, 1826-87*, ed. by W. Berdrow (Berlin 1928), tr. by E. W. Dickes (New York 1930); Raphael, Gaston, *Krupp et Thyssen* (Paris 1925); Krupp'sche Gusstahlfabrik, *Zum 100jährigen Bestehen der Firma Krupp* (Jena 1912), English translation (Essen 1912); Murray, H. R., *Krupp's and the International Armaments Ring* (London 1915).

**KRUTTSCHNITT, JULIUS** (1854-1925), American railroad executive. Kruttschnitt graduated from Washington and Lee University in 1873 with the degree of civil engineer; during the following five years he taught mathematics and in 1878 entered railroad service. By 1895 he had become general manager of the Southern Pacific lines. In 1901, when the Union Pacific Railroad acquired the Southern Pacific, Kruttschnitt became assistant to E. H. Harriman; he was in effect in executive charge of the Southern Pacific and was the mainstay of Harriman's constructive plans. In 1904 he was made director of maintenance and operation of all the Harriman lines and in 1913, when the Union Pacific relinquished control of the Southern Pacific, he became executive head of the latter. In 1917 he served as a member of the Railroads' War Board.

Kruttschnitt was an outstanding builder and administrator of railroad properties, one of the few engineers to rise to high executive position. He took an active part in the rebuilding of two major systems and acquired a well deserved reputation because of the high standard of maintenance and the low cost of operation of the properties under his direction. He contributed greatly to the development of operating statistics, fuel economy and accident prevention. Such was his success in promoting safety of operation that during a period of eight years, within which the Southern Pacific carried 320,000,000 passengers, only one passenger lost his life in a train accident. He recognized the importance of cultivating public opinion, appeared

frequently before Congressional committees and the Interstate Commerce Commission and made many addresses and wrote many articles dealing with railroad problems. He was an earnest advocate of private operation and often protested against the invasion by the government of the field of management, although he had an advanced concept of the public responsibility of the railroads which demonstrated his ability to adapt his views to changing conditions.

ELIOT JONES

*Consult:* "The Career of Julius Kruttschnitt" in *Railway Age*, vol. lxxviii (1925) 1459-62.

**KU KLUX KLAN.** The original Ku Klux Klan was a secret organization which flourished in the southern states of America in the days of the reconstruction after the Civil War, particularly in the period from 1867 to 1870. Its purpose was to protest against the conquering attitude which the administration was taking in its dealings with the South. The white population was impoverished by the war, the Negro population while technically freed was guided by leaders, largely political appointees, from the North (carpetbaggers) and their southern assistants (scalawags), and the readjustment of the two groups to the new situation created by the conflict made for a welter of loosened passions which pushed both sides into all manner of lawless and vindictive actions. The evidence seems to indicate that the aggressors were the northern politicians, who used the Negroes, organized into secret organizations such as the Union League, to terrorize the southern whites into submission to the politicians' exploitation of political power. The behavior of Negro politicians and rowdies was considered not only a political and economic danger but also an offense against southern ideals of racial purity and social superiority. The atmosphere was rife for some sort of guerilla protest. It came about through the utilization of a harmless social club organized in Pulaski, Tennessee, by a group of young confederate officers. Finding time hanging heavy on their hands, they organized in 1866 a secret society which they called by the Greek name "Kuklos," the circle. The transition from Kuklos to Ku Klux Klan was easy enough, and the power of intimidation which lies in mystery, particularly in dealings with ignorant and superstitious folk, was readily apparent. The Ku Klux Klan was not the only organization of its kind but it has managed to attract the greatest attention. Of other similar

organizations the Knights of the White Camelia was the largest. During its most flourishing period the Klan is said to have had a membership of around 550,000, which would include nearly the entire adult male white population of the South. It was effective in terrorizing the Negro into retreating to his former state of political subservience to the white man or at any rate into giving up most of his political activities. Klan terrorism against carpetbagger and scalawag resulted in a Congressional investigation, which ultimately brought a moderation of previous political methods and a realization of the unwisdom of continuing to treat the South as a conquered territory. It was fortunate that affairs took this turn because the Klan like all secret organizations was beginning to be dominated by the more irresponsible members of the community, who used the motives and the disguise and the mystery of the organization to wreak private vengeance or serve private purposes. After 1872 it was no longer necessary for the white man to don a disguise in order to fight for white supremacy and the Klan disappeared, leaving in its stead a number of organizations, such as the White League of Louisiana, which were able to accomplish their purpose without resort to secrecy. The original Ku Klux Klan was not only influential in the political and social life of the South, but it has added to southern folklore one of its most picturesque and colorful chapters.

The modern Ku Klux Klan has very little in common with the original Klan except the name. The problems which faced the men of the reconstruction period were not present for the founders and adherents of the group which created such a sensation in the years from 1920 to 1925. The psychological motivation behind the new movement will always remain a more or less puzzling phenomenon. It was originated in Atlanta, Georgia, in 1915, by William J. Simmons, but it was of slight importance until 1920, when Simmons associated with himself two professional publicity agents, Edward Young Clarke and Mrs. Elizabeth Tyler. The ranks of the organization soon began to show the effect of this campaign of promotion. The professed motives for its activities varied with the region in which it operated. In the south the Klan appealed primarily to the fundamentalist beliefs in morals and religion; in the north it took on more of an anti-alien and anti-Bolshevik character. Its tactics at first consisted in meeting under the blaze of a fiery cross in the open country, where

its members, masked and hooded in white robes in the traditional Ku Klux manner, listened to fiery addresses of a high moral or patriotic character. Soon after there appeared the other Klan tactics: anonymous threats and occasionally whipping, tarring and feathering and other acts of violence including killing. The *New York World* tabulated the violent actions occurring from October, 1920, to October, 1921, as follows: "four killings, one mutilation, one branding with acid, forty-one floggings, twenty-seven tar and feather parties, five kidnappings, forty-three persons warned to leave town or otherwise threatened, fourteen communities threatened by warning posters, and sixteen parades by masked men with warning placards."

Although these acts of violence were comparatively unimportant the effect was to spread considerable dread and consternation throughout the land, particularly in the south. The secrecy and mystery surrounding the Klan gave it an appearance of great power and enabled it to make a bid for political control. Some leading politicians courted it and the Klan began to play a very important role in the politics of several southern states. On September 6, 1921, however, the *New York World* began the publication of a series of twenty-one articles in which it gave an account of the origin, organization and activities of the Klan, emphasizing particularly its money making aspects. On September 18 the *World* carried a story concerning moral turpitude of both Clarke and Mrs. Tyler which its correspondent had unearthed in the records of the police court in Atlanta as far back as October 31, 1919. On November 11, 1921, Congress began a preliminary examination into the activities of the Klan which brought out much more information concerning its financial activities. The total effect of all of these disclosures and investigations was to cause a break in the ranks of the Klan, leading inevitably to a reorganization of its management. Control passed from Simmons, Clarke and Tyler to a new group headed by Hiram Wesley Evans, a dentist from Dallas, Texas, who was made Imperial Wizard, or chief officer.

The Simmons period was characterized by the aftermath of the war hysteria and by the uneasiness which followed the emotional tenseness of that struggle, and which was accentuated by the economic distress consequent upon the demobilization and the panic of 1920. With so many irritating provocations it was easy for sections dominated by "fundamentalist" moral and

religious attitudes, like the south and portions of the middle west, to seize upon the explanation given by the Klan as to the source of the evil: personal deviations from the moral code or the machinations of Catholics and aliens. The remedy was as simple as the cause: admonition and punishment of the offender. Around this fundamentalist nucleus there gathered other compulsions: personal animosities; distrust of the efficiency of the instruments of law and order; the scapegoat attitude toward the Catholics where the Catholics possessed political power, as in New York and Connecticut, and toward the alien and the Negro; and, finally, the sense of power and importance which came to a person who felt himself one of a group whose very name inspired uneasiness and terror.

The Evans regime in the Klan's history coincides with its greatest numerical strength. Estimates of its membership ran as high as 6,000,000 in 1924. Politically it reached out for a wider territory and it became an effective issue in the political campaigns in many states. The tactics were changed and the former acts of violence discontinued to a very large extent. Interest seemed to center now in the acquisition of political power and the means to this end was the boycott of those considered as undesirable in politics and business or inimical to the Klan, the names of those to be elected or defeated being passed around at the meetings of the local bodies. In Texas the Klan succeeded in electing a senator and was an issue in the gubernatorial elections of 1924 and 1926. The Klan played an important political role also in Arkansas, Connecticut, Indiana, Oklahoma, Alabama, Georgia and Oregon. In Oregon it succeeded in passing legislation against parochial schools. Whether it has played any important role in recent years in national or state politics is difficult to state; in Texas, where its influence was greatest, it has apparently ceased to exercise any political influence and very little is heard of its doings in any other field. Whatever economic basis there was in the Klan motivation, such as jealousy of the Negro in the south and of the successful Jew and alien in both north and south, was wiped out by the shower of gold and stock dividends which fell upon the United States after 1924, and in this period most of the remaining war hysteria seems also to have disappeared. The feeling against Catholicism was a factor, however, in the Democratic convention of 1924 and also in the election of 1928, in which the presence of a Catholic

candidate and his identification with the forces opposed to prohibition caused something of a flare up of Klan activities.

Both the anti-alien and the anti-Catholic aspects of the Klan's platform have had their counterpart in earlier periods of American history. The American Party of the 1850's, generally known as Know Nothings, and the American Protective Association (A. P. A.), organized in 1887, were also primarily nativistic manifestations. Like the Klan they flourished at times of disturbance and transition. The Know Nothings arose at a time when immigration was particularly heavy, and the period of the activities of the A. P. A. corresponded with the great economic unrest which followed the close of the frontier, with the definite industrialization of America and with the wave of political protest at the end of the nineteenth century.

Whether psychologically the Klan has any fundamental resemblance to the Fascist movements and to the attendant wave of dictatorships which came over Europe in the decade between 1920 and 1930, it is difficult to say. A severe economic and moral crisis, like that which usually precedes the coming of a dictatorship, is likely to leave the existing instruments of social control utterly incapable of meeting the situation. The result is a rising to the surface of the most violently articulate elements in the community, who seek to take the place of the legitimate and ineffective instruments of law and order and who partially succeed for the same reason which brought them into existence. Having no legitimate and legal means of coercion at their disposal they resort to illegal means and undercover tactics, which give them greater power than their numbers entitle them to claim and which in time result in a great accretion in their numbers. The organization grows by cumulation until a crisis either makes it succeed or breaks it up. Fascism succeeded, but Ku Kluxism has apparently ceased to exist as a menace or a power.

MAX SYLVIVUS HANDMAN

See: RACE CONFLICT; NEGRO PROBLEM; ALIEN; ANTI-RADICALISM; ANTISEMITISM; FUNDAMENTALISM; RECONSTRUCTION; INTIMIDATION; INTOLERANCE; FANATICISM.

Consult. Fleming, Walter L., *Documentary History of the Reconstruction*, 2 vols. (Cleveland 1906-07) vol. ii, p. 327-77; Lester, J. C., and Wilson, D. L., *The Ku Klux Klan* (rev. ed. by W. L. Fleming, New York 1905); Davis, Susan L., *Authentic History, Ku Klux Klan, 1865-77* (New York 1924); Frost, Stanley, *The Challenge of the Klan* (Indianapolis 1924); Fry, Henry P., *The Modern Ku Klux Klan* (Boston 1922);

Mecklin, John M., *The Ku Klux Klan; A Study of the American Mind* (New York 1924); Kallen, Horace M., *Culture and Democracy in the United States* (New York 1924) p. 9-43.

KU YEN-WU (Ku T'inglin, originally Ku Chiang) (1613-82), Chinese historian. Ku Yen-wu was the founder of the seventeenth and eighteenth century "school of Han learning," a scientific movement emphasizing a cautious skepticism in the use of ancient documents, the value of hypothesis and the necessity of induction from wide evidence for the achievement of a new originality and a new practicality. This movement coincided in method and in time with the scientific awakening in the West but operated almost exclusively in the fields of etymology, phonetics, epigraphy, textual criticism and geography. Discarding the subjective methods of the so-called Sung learning, which had dominated Chinese thinking for five centuries, it aimed at an objective reexamination of the supposedly most ancient texts—those of the Han period (206 B.C.-220 A.D.).

During the trying period of the Manchu conquest of China in 1644 Ku Yen-wu like many of his intellectual contemporaries declined to cooperate with the ruling dynasty, preferring to spend his life in a study of the underlying causes of the national decadence and the rehabilitation of sound scholarship. At the age of fifty-four he left permanently his home in K'unshan, Kiangsu province, devoting the remainder of his life to travel, study and writing, reaching conclusions only on the basis of wide reading and personal observation of every part of north China. The results of these studies are incorporated in his most famous work, *Jih Chih Lu* (Daily jottings, 32 bks., 1676), comprising carefully formulated notes written over a period of thirty years. His special treatises on phonetics and epigraphy laid the foundation for all later Chinese studies in these fields, while his great work on geography, *T'ien Hsia Chün Kuo Li Ping Shu* (A historical geography of the empire, 120 bks., 1662), gave to this subject a practical as well as a historical importance.

ARTHUR W. HUMMEL

KUENEN, ABRAHAM (1828-91), Dutch Biblical scholar and historian of religion. In 1846 Kuenen entered the University of Leyden, where he passed his entire academic life; he became full professor in 1855 and from 1877 until his death was professor of the Old Testament. With Wellhausen he was cofounder of the still

prevailing historico-critical school of Old Testament scholarship. After 1869 he accepted the view of Graf, also maintained by Wellhausen, that the so-called Priestly Code of the Pentateuch was the latest of the pentateuchal documents. Together with Wellhausen he defended the posteriority of the entire Priestly Code, not merely of its laws. Thanks to his careful and penetrating scholarship combined with a remarkable capacity for synthesis he was able to apply the Hegelian theory of historical evolution to the religion and literature of Israel more completely than was Wellhausen. Both Kuenen and Wellhausen were indebted to Vatke for their inspiration. By far the ablest of the scholars who adopted the new theory, they have left their names indelibly stamped on it. Like Wellhausen, Kuenen held that before they became monotheists the people of Israel passed successively through a nomadic stage, in which they were animists; an early agricultural stage, in which they were henotheistic devotees of a nature cult; and a later agricultural stage. The later agricultural stage was the age of the prophets, who were followed by the legalists just before the Babylonian Exile.

W. F. ALBRIGHT

*Important works:* *Historisch-kritisch onderzoek naar het ontstaan en de verzameling van de boeken des Ouden Verbonds*, 3 vols. (Leyden 1861-65, 2nd ed., 1885-93), tr. by P. H. Wicksteed as *Historico-critical Inquiry into the Origin of the Hexateuch* (London 1886); *De godsdienst van Israël*, 2 vols. (Haarlem 1869-70), tr. by A. H. May, 3 vols. (London 1874-75); *De profeten en de profetie onder Israël*, 2 vols. (Leyden 1875), tr. by A. Milroy (London 1877); *National Religions and Universal Religions* (London 1882); *Gesammelte Abhandlungen zur biblischen Wissenschaft*, tr. by K. Budde from Dutch mss. (Freiburg 1894).

*Consult:* Maanen, W. C. van, in *Protestantische Kirchenzeitung*, vol. xxxix (1892) 255-60, 283-89, 307-12; Budde, K., Introduction to his edition of Kuenen's *Gesammelte Abhandlungen*, p. iii-xii; Eissfeldt, Otto, "Zwei Leidener Darstellungen der israelitischen Religionsgeschichte (A. Kuenen und B. D. Erdmans)" in *Zeitschrift der deutschen morgenländischen Gesellschaft*, n.s., vol. x (1931) 172-95; Toy, E. H., in *New World*, vol. i (1892) 64-88; Wicksteed, P. H., in *Jewish Quarterly Review*, vol. iv (1891-92) 571-605.

KULIZHNY, ANDREY EVMENEVICH (1878-1919), Russian cooperative worker. Kulizhny studied at the Institute of Forestry in St. Petersburg but was soon expelled for participating in "illegal" student activity. Ordered to leave St. Petersburg he returned to Poltava, where he worked as an agronomist of the zemstvo and attained some distinction in teaching

the peasants improved methods of cultivation. In 1906 he was again imprisoned for political activity among the peasants. On his release from prison he entered the Commercial Institute in Moscow, acting at the same time as secretary of the Moscow committee on rural industrial and credit associations. In 1913 he was elected member of the executive board of the Moscow People's Bank in charge of the commodity department which served as the center of the buying and selling operations of the agricultural cooperatives. In 1917 under the Provisional Government he was assistant minister in the Department of Food Supply. He edited the *Vestnik kooperativnikh soyuzov* (Bulletin of the cooperative unions) from 1915 to 1917.

Engrossed in practical work in the field of cooperation, he wrote little and his few publications were devoted primarily to practical ends. He believed that the liquidation of a natural economy which was a survival of serfdom and the consequent development of production for the market would increase the economic opportunities of peasant farming, and advocated the formation of cooperative societies to aid the peasant in securing the necessary means of production, to familiarize him with rational methods of cultivation and finally to organize the marketing of his products.

S. PROCOPOVICZ

*Important works:* *Derevenskaya kooperatsiya* (Rural cooperation) (Moscow 1911, 5th ed. 1920), with a biographical essay on Kulizhny by E. L. Gurevich; *Kooperativnyi sbit produktov selskogo khozyaystva* (Co-operative marketing of agricultural products) (Moscow 1913, 3rd ed. 1918); *Organizatsionnaya skhema kooperativnogo stroitelstva v oblasti selskogo khozyaystva* (Plan for the cooperative organization in agriculture) (Moscow 1918).

KULTURKREIS. See DIFFUSIONISM.

KUNFI, ZSIGMOND (1879-1929), Hungarian socialist and educator. Kunfi was a teacher of literature in a provincial high school but resigned his position after a conflict with Count Albert Apponyi, then minister of public instruction. He went to Budapest and soon became the most influential journalist and orator of the Social Democratic party and editor of some of its most important organs. Although an orthodox Marxist he was an admirer of the French spirit. During the World War he opposed the Central Powers and expressed the conviction that the Hapsburg monarchy would be dismembered. After the collapse of the empire he became min-

ister of public instruction in the Hungarian republican government of Count Károlyi. Influenced by the Russian Revolution although he did not accept Bolshevism he became the leader of the left socialists and the moderate leader in the Soviet government of Béla Kún. He felt, however, that this experiment would lead to disaster and subsequently reproached himself for his share in it. Under the White terror of Admiral Horthy he was the last to flee. In Vienna he was an influential teacher in the Workers' College, and as an editor of the *Arbeiter-Zeitung* he led a strenuous fight against the reactionary regime in Hungary and against Fascism in general. In the Second International he was an authority on Danubian problems. Kunfi was primarily interested in a radical educational and political reform in Hungary, the indispensable condition for which, he insisted, was the democratic alliance of workers and peasants against the feudal regime of the landed proprietors.

OSCAR JÁSZI

*Consult:* Kunfi Zsigmond (Vienna 1930), a memorial volume containing a biography of Kunfi by L. Fényes; Rónai, Zoltán, biographical introduction to Kunfi's *Die Neugestaltung der Welt*, ed. by J. Braunthal (Vienna 1930) p. 5-12.

KUOMINTANG. The Kuomintang, or Nationalist party, is the revolutionary and nationalist party of China, which since 1924 has become the most vigorous political element in the country. Its success has by no means resulted merely from a sudden expression of nationalism but represents the growth of a revolutionary movement which dates from the closing period of the Manchu dynasty. The empire of the alien Manchus had become enfeebled in the late nineteenth century through its inability to cope with the problems created by foreign commerce and by the impact of modern ideas from the West and from Japan; and it was further endangered by the growing power of the great Chinese viceroys, by the opposition of the secret societies and by the extensive Taiping Rebellion. Tardy and timid reform movements proved of no avail; there were, however, conscious efforts at revolution in the activity of a small propagandist organization, the Hsing Chung Hui (Association for the Regeneration of China, 1894-1905) and in the larger T'ung Meng Hui (Revolutionary Alliance, 1905-11), which developed from it and which later became the Kuomintang. Loose in organization, these societies owed much to the attractive personality of Sun Yat-sen. Although they had no stable base in China they worked

successfully among the large bodies of Chinese students in Japan; among the prosperous and awakened emigrants around the Pacific; among the Chinese population of foreign possessions and settlements, such as Hongkong and Shanghai; and among scattered groups in China proper. By 1911 the T'ung Meng Hui had won 300,000 adherents.

The ideology of these societies had as its factual basis the needs of China and as its intellectual basis modern political and economic achievement and theory, the latter as adapted from the West by Sun Yat-sen, Wang Ching-wei and their associates. They urged a Chinese national regeneration in opposition to the rule of the Manchus and foreign imperialism and demanded democracy in government, "equalization of land-ownership" in a form of single tax and a collectivist economic advance to relieve poverty. After several fruitless uprisings the T'ung Meng Hui succeeded in affecting the army with its propaganda and in 1911 was able to stimulate and organize local military risings into a movement which resulted in a superficial combination of all China south of the Yangtze in a revolutionary republic. Sun was its provisional president and Nanking its headquarters. The conspirators now became an open political party, the Kuomintang, which absorbed smaller reform groups. The victory was, however, far from complete, for the principles of the Kuomintang had not as yet obtained a firm hold upon the Chinese masses; and the period from the revolution until the reorganization of the party in 1924 was marked by a continuous struggle against the forces of reaction.

In order to devote himself to the economic reconstruction of China, which he regarded as the necessary concomitant of political progress, and in order to unite the north and south Sun resigned in 1912 in favor of Yuan Shih-k'ai, the strong man of the imperial regime, who had furthered the constitutional movement in Peking and secured the abdication of the Manchus in 1912. Although he agreed to observe the provisional constitution Yuan proved an arbitrary executive and was continually challenged by the Kuomintang majority in the legislative bodies. The "second revolution" of 1913, fostered by Sun Yat-sen as a protest against the unbridled actions of Yuan, was a diffuse military revolt in the south, which resulted in the destruction of the only troops upon which the Kuomintang could depend. Yuan became president and expelled Kuomintang members from the parliament, whereupon Sun established among his

followers an opposition group known as the Revolutionary party, which helped to counter Yuan's dynastic ambitions with new revolts. When Yuan died in 1916 and the provisional constitution was restored, the old Kuomintang members returned to struggle in the parliament against various cliques of military chiefs; but after a series of inglorious disputes the entire parliament was dissolved in 1917. In the next year old Kuomintang leaders and allied generals set up in Canton a Southern Constitutional Government, which was constantly interrupted by military dissensions.

The party was at a low point when in 1919 it received a new impetus from the independent student movement, from national agitations against Japanese policies in China and from the weakness and complicity of the Peking government. By military shifts the Constitutional Government was again set up in Canton in 1921 with Sun as "president of the Chinese republic," only to be crushed a year later by Sun's former mainstay, General Ch'en Ch'ung-ming. The failure of the Kuomintang even at its southern base seemed complete, although its propaganda for a modern centralized government as opposed to the decadent military feudalism of the north had spread widely.

In the year 1922-23 Sun sought help for the Kuomintang in the form of western military organizers and technical aids; only Russia found it politic to assist him. Russian diplomatic representatives had already spread Communist party propaganda among students in the north of China and among the laborers of Chinese ports; now they expected to profit by strengthening the Kuomintang in its attacks upon the capitalistic powers and to gain favor for Communist work in China on the rising tide of organized nationalism. The Kuomintang sought an effective co-operation against the privileged powers and above all a revolutionary technique for the achievement of the long desired control of China. In January, 1923, the Soviet ambassador Joffe and Sun published their basis of understanding, which recognized that the Kuomintang still maintained its own principles as goals. Late in that year Sun and his followers made a fresh start in Canton, while Borodin with the backing of the new Soviet ambassador Karakhan began his effective efforts as high adviser to the Kuomintang. The first party congress in January, 1924, was a fairly representative body, which formulated for the party an impressive manifesto of policy and a constitution. Communists who

accepted nationalist principles were admitted to the Kuomintang, although the latter did not include Communist principles in their program. The reorganization of the party was aimed at correcting its serious deficiencies, its lack of solidarity in organization, program and propaganda and its dearth of military resources.

The new program, which was strongly influenced by Borodin's ideas, called for strict discipline and unity with great emphasis upon energetic, popularized propaganda. Sun's lectures on the *San Min Chu I* (tr. by F. W. Price as *The Three Principles of the People*, Shanghai 1927) were a part of this phase. These principles, which were accepted as the goals of the Kuomintang, were nationalism, democracy and the people's livelihood. Nationalism signified for Sun a cultural and spiritual as well as a political union of the Chinese, which should be able to maintain its independence against foreign states. A governmental system was to be established in which four popular controls—suffrage, recall, initiative and referendum—guaranteed democracy, while the government was to work through five separate administrative powers—legislature, judiciary, executive, examination (civil service) and control (impeachment and audit). Although in Sun's *Fundamentals of National Reconstruction* emphasis was laid upon self-government in the *hsien* (local district) and province, in practise the struggle to gain power and to check enemies has furthered centralism. To insure the people's livelihood economic equality was to be sought through equalization of landholding, prevention of monopolies in land and encouragement of co-operation. Sun felt that capitalism, while necessary, should be under strict regulation in the public interest. He considered that even foreign capital is desirable to speed economic progress, but that it must be firmly directed by a sovereign government. Sun also proposed in his *Fundamentals* that the process of reconstruction be divided into three stages: the first, directed toward the establishment of order, would be under the control of a military government; the next was to be a period of political tutelage, during which the revolutionary leaders were to rule; while the final stage was to witness the establishment of popular sovereignty. These ideas were embodied in a brief popular form in the party manifesto of 1924.

After the reorganization the Kuomintang was rebuilt on the lines of the Russian Communist party with local units leading up through indirect elections to an annual party conference (actually

held in 1924, 1926, 1929 and 1931), which in turn was to select central committees as ad interim directing bodies. In practise the Standing Committee of the Central Executive Committee has tended to be the effective organ of the party oligarchy, while the local units have been agencies for carrying out its will rather than the truly constituent sources of its authority. A political training school for party organizers and propagandists and Whampoa Military Academy, a military school for the training of nationalist officers, were established. Laborers and peasants were organized for "popular movements" and special attention was given to women and young people. Separate bureaus were set up for the organization of these groups as well as of the oversea Chinese and the army and navy men; nationalist armies were trained. In general a tremendous burst of activity characterized the Kuomintang immediately after its reception of Russian aid.

Certain elements continued to resent the rise of the Communists and their supporters, but the new policy was dominant in November, 1924, when Sun accepted the invitation of the northern government to attend a rehabilitation conference. He died amid the contentions of would be leaders in his party. Borodin now became exceedingly influential. He utilized the skillfully stimulated public sentiment over the Shanghai and Shameen clashes with foreign interests in May and June, 1925, the large body of radical and partly armed laborers maintained as "strike pickets" in Canton and the "political officers" assigned to supervise each military unit. The Central Executive Committee expelled from the party the important conservatives, who then organized the Western Hills Conference near Peking. They hoped to secure the adoption of their anti-Communist program at the Second National Congress but were unsuccessful: in fact the Communists continually strengthened their hold upon the party. Chiang Kai-shek stood out among the radicals, and in the Whampoa Military Academy he produced revolutionary officers of a new quality. But he showed an independent will, and preparations for military and political advance to the north were interrupted in March, 1926, by his anti-Communist coup. He and Borodin were forced to cooperate, however, in an endeavor to secure control of the north, the goal of both the Nationalist armies and the political organizations. By March, 1927, Russian methods of propaganda and Chiang's military activities profiting by the division of opponents

had won their way well into the Yangtze valley. Borodin and the radicals used Hankow as the center of a government increasingly like that of Soviet Russia. Meanwhile Chiang tried to set up a new base under moderate Chinese control and in April succeeded in doing so at Nanking with the support of Shanghai bankers; his success marked the victory of the military element in the Kuomintang and the end of the Communist-Nationalist alliance.

The Nanking regime claimed to be a restoration of the true Kuomintang through the elimination of the Russian and Communist elements. Control by the military and the suppression of radical "popular movements" were scarcely disguised. The Hankow faction, surrounded by opportunist military leaders and discredited by the revelation of orders from Moscow, melted away when Borodin's Chinese group expelled him in July, 1927. The union of almost all the center and right groups in and with the Nanking party and the military was finally achieved after laborious efforts. This union made possible in 1928 the advance to the north of the Kuomintang armies and their allies. The Kuomintang was thus in control of a large part of the country, and although the party was sadly diluted and dependent upon regional military leaders, there existed an opportunity for a real Nationalist government of China.

In October, 1928, the Central Executive Committee adopted the "organic law" which set up the "five-power government" following Sun's political system. In Kuomintang terms, the "military period" of war upon the old regime had been completed and the period of "political tutelage," in which the party was to teach the people how to exercise political rights, had begun. This period would end, it was announced, in 1935. During the period of tutelage the party is to act in the place of a representative organ and sovereignty is to be vested in the party congress. Wholly or largely from their own membership the Central Executive Committee and the Central Supervisory Committee named a Central Political Council which appointed and instructed the chief officers of the national government. The "five powers" were organized into five administrative departments or councils, yuan. In form the national government is an agent of the party with no status of its own. Actually there is much repetition of personnel in the highest units of party and government and the leaders of the Nationalist movement have turned somewhat from the party as a means of revolution to the

government as a means of control. Nationalism, anxiety for reform, the tradition of officialism and self-interest, all support bureaucratic tendencies in a land which is divided and confused. Armies and revenues are in the hands of the national or regional governments, upon whom the party depends for protection and funds. The new political experiments have gained a limited success, continually endangered by civil wars and by regional, factional and personal rivalries. The modifications of December, 1931, emphasized party control and the separation of powers by making each of the five yuan directly responsible to the Central Executive Committee. In actual administration the government and military leaders are semi-independent, particularly in the regions which are distant from the capital.

The significance of the role of the Kuomintang in Chinese national regeneration is difficult to gauge. It has achieved general success in arousing the more alert of the Chinese people against the Manchus, military feudalism and foreign control. It has also greatly increased the concern with economic and social progress, usually in collectivist terms; and through the state control of schools, through the reform of textbooks and curricula with their emphasis upon natural science and social and political subjects and through the required study of the *San Min Chu I* under party members it has exercised considerable influence upon education along modern and national lines. The actual accomplishment of the nationalist ideals has been hindered by the uneducated, unorganized and poverty stricken condition of the vast, dispersed population. Soviet revolutionary technique and partial militarization, which together gained for the Kuomintang its precarious supremacy, brought with them the spread of Communism, the splitting of the party, the accommodation of an idealistic program to the power of generals and to regionalism. Within the Kuomintang's comprehensive aims still exists the peril of dualism: some members wish primarily for a political revolution and oppose radical social change, while others stress social reorganization and attack the political leaders as capitalists and feudalists. In addition to the serious difficulties created by regional movements the party is torn by factional-personal strife and continual use of force or intrigue; indeed there are no two leaders of importance who have remained working companions throughout the critical years. Since the reorganization of 1924 the gross membership of the Kuomintang has



averaged about 450,000, or one in a thousand of population. During the period of "popular movements" from 1924 to 1927 the party included a fair number of laborers and peasants, but in general the members are chiefly actual or expectant functionaries, officeholders in the party of the government, military officers, soldiers, teachers and students. More than half are under thirty; about one fifth have a secondary education; 3 percent are women. The Kuomintang has exercised authority for only a short time and it has encountered tremendous obstacles. Its position is perilous not only because of the menace offered by certain foreign powers but because it has developed desires for good government, national prestige and prosperity far beyond its ability to fulfil them. It has boldly assumed exclusive responsibility for the nation, but despite the relatively high ability of certain of its leaders it is still doubtful whether such a dispirited and faction ridden body will be capable of sustaining its great burden.

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See: GOVERNMENT, section on CHINA; CHINESE PROBLEM; EUROPEANIZATION; NATIONALISM; COMMUNIST PARTIES.

Consult: Holcombe, A. N., *The Chinese Revolution* (2nd ed. Cambridge, Mass. 1931); MacNair, H. F., *China in Revolution* (Chicago 1931); Rodes, J., *La Chine nationaliste, 1912-1930* (Paris 1931); T'ang Leang-li, *The Inner History of the Chinese Revolution* (London 1930); Lynn, J. C. H., *Political Parties in China* (Peiping 1930) ch. vi; Sokolsky, G. E., "The Kuomintang" in *China Year Book* (1928) ch. xxvii, and (1929-30) ch. xxvii; Foreign Policy Association, "The Rise of the Kuomintang," in its *Information Service*, vol. iv (1928-29) 156-86; Woo, T. C., *The Kuomintang and the Future of the Chinese Revolution* (London 1928); Chapman, H. O., *The Chinese Revolution 1920-27* (London 1928); *Two Years of Nationalist China*, ed. by Min-ch'ien T. Z. T'au (Shanghai 1930); Royal Institute of International Affairs, *Survey of International Affairs* by A. J. Toynbee and others (London 1925- ), especially volume for 1926, pt. iii; Wiegner, L., *L'outre d'Eole* (1923); *Nationalisme* (1924), *Le feu aux poudres* (1925), *Baum!* (1927), *Chaos* (1931), and *Prodromes* (1931), volumes in *La Chine moderne* series published in Hien-hien, China.

LABAND, PAUL (1838-1918), German jurist. Laband was the most representative teacher of public law of imperial Germany. From the eastern part of the empire, where in 1864 he became professor at Königsberg, he was called to the newly founded chair in Strasbourg in 1872, which he continued to occupy until his death. As member of the first chamber and of the council of state of Alsace-Lorraine he remained

in direct contact with the political relations of those provinces.

Laband's importance in intellectual history rests on his attempt to found public law as a pure legal discipline. This implied a turning aside from political and sociological factors and the abandonment of a metaphysical basis; there was to be sought a scientific objectivity and freedom of evaluation. By following this course Laband became the true founder of the so-called conceptual jurisprudence (*Begriffsjurisprudenz*) in public law. Adopting the mathematical procedure of the natural sciences, he endeavored to show from the postulates of the existing law that his conclusions were logically inescapable. Any contrary conclusion rested thus not upon different ethico-political assumptions but was entirely false and due to error of thought and calculation. There was present at the same time in this conviction the liberal belief in the possibility of the purging of all differences by the method of intellectual discussion, a belief which on its side went back to the law of nature. In the final result this procedure necessarily placed legal form, as essential in itself, above content and led to a misunderstanding of the political, religious, metaphysical and economic background of the law as well as to the stifling of all sense of public policy.

Laband's system signified the proclamation of the purely intellectual man as the ideal jurist. But it attained the appearance of scientific objectivity only because the political differences within the bourgeoisie of imperial Germany were relatively slight. Present day doctrine in Germany has turned aside from the positivistic *Begriffsjurisprudenz* and once again clearly perceives the irrational, historico-metaphysical background of the state. On the other hand, in Austria the pure jurisprudence of Kelsen has led to its revival and further extension, so that to a certain extent Laband still represents the focal point of the struggle. In any event the great clarity and the admirable construction of Laband's theory of public law were recognized by his opponents as well as his disciples, and it ruled German *Staatsdogmatik* for a full half century.

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*Important works:* *Das Staatsrecht des deutschen Reiches*, 3 vols. (Tübingen 1876-82; 5th ed., 4 vols., 1911-14), abridged edition, 1 vol. (Tübingen 1883; 4th rev. ed. as *Deutsches Reichsstaatsrecht*, 1907; 7th ed. by Otto Mayer, 1919).

Consult: Sander, Fritz, *Staat und Recht*, Wiener staats-

wissenschaftliche Studien, n.s., no. 1, 2 vols. (Leipzig 1922) vol. 1, p. 701-76; Emerson, Rupert, *State and Sovereignty in Modern Germany* (New Haven 1928).

LA BOÉTIE, ÉTIENNE DE (La Boétie) (1530-63), French political theorist and litterateur. La Boétie, the adored friend of Montaigne, was born at Sarlat and died of the plague at Germignat. His principal contribution to mankind was a treatise called *Discours de la servitude volontaire*, or *Le contr' un*, which he wrote at the age of sixteen or, according to another edition of Montaigne, eighteen. As the investigations of Joseph Barrère have convincingly proved, the work was partly intended as a refutation of Machiavelli's *Prince*, published in 1532. The reason for its failure to mention Machiavelli was the fact that Catherine de' Medici, who then dominated the French court and to whose father the *Prince* had been dedicated, was a great admirer of the famous Florentine. The *Discours* constitutes at the same time an eloquent protest against political tyranny and a profound analysis of the genesis of human servitude, a term by which La Boétie designates the position of those subordinated to a government aiming only to gratify the desires of the governing person or group. According to its main thesis servitude is, to use a modern term, a type of political behaviorism which has resulted from the distortion of the original free nature of man by long governmental drill and pseudo-religious education. La Boétie describes the complicated political mechanism and network of corruption enabling the tyrant to maintain his antisocial domination. In conclusion he points the way to liberation through passive resistance. He declares that political servitude is voluntary; it can be terminated if those in bondage withhold their support from the tyrant.

La Boétie subsequently became a councilor in the Parlement of Bordeaux, then the supreme judicial body of this region. Under the pressure of the growing absolutism of the French king and of constant religious persecutions and civil wars the *Discours* remained unpublished except for brief excerpts until it was included among the pamphlets collected as *Mémoires de l'état de France* by the Huguenot pamphleteer Simon Goulard in 1574. Montaigne omitted it from the edition of La Boétie's work published eight years after his friend's death; when the prudent skeptic mentioned it in the 1580 edition of his own essays (bk. 1, ch. 28) he sought to minimize its importance by describing it as a literary exercise.

This extreme caution of Montaigne aroused the suspicion of A. Armaingaud, who tried to prove (in *Revue politique et parlementaire*, vol. xlvii, 1906, p. 499-522) that the real author of the *Discours* was not La Boétie but Montaigne himself. Armaingaud contends that Montaigne used the name of his dead friend as a kind of pseudonym in his fight against the hated regime. This hypothesis seems, however, to be without sufficient evidence. In the meantime the *Discours* had profound repercussions as a circulating manuscript and influenced some of the later monarchomachs. Although La Boétie himself was not a Huguenot, his pamphlet, deeper and more profound in its denunciation of tyranny than any of the numerous writings which the French religious persecutions of the period evoked, provided the fleeing Huguenots after 1572 with an ideological weapon. Its later history varied in different countries. The Anglo-Saxons regarded it as little more than the rhetorical exercise of a youth who knew his Seneca; certain eminent Frenchmen have extolled the beauty and force of La Boétie's argument; Tolstoy exalted him as his precursor. According to Landauer the work was the first systematic formulation of the message later developed by Godwin, Stirner, Proudhon, Bakunin and Tolstoy. Passages in the *Discours* sound like a critique of the Fascist and Bolshevik dictatorships.

OSCAR JÁSZI

*Works:* Among the editions of La Boétie's complete works are those by Léon Feugère (Paris 1846), and by P. Bonnefon (Bordeaux 1892), who has also published a new edition of the *Discours* (Paris 1922). The *Discours* was translated into English (London 1735).

*Consult:* Feugère, Léon, *Étienne de la Boétie, ami de Montaigne* (Paris 1845); Barrère, Joseph, *Étienne de la Boétie contre Nicolas Machiavel* (Bordeaux 1908); Dezeimeris, R., *Sur l'objectif réel du discours d'E. de la Boétie* (Bordeaux 1907); Landauer, G., *Die Revolution* (Frankfurt 1907) p. 78-96; Weill, G., *Les théories sur le pouvoir royal en France pendant les guerres de religion* (Paris 1892); Allen, J. W., *A History of Political Thought in the Sixteenth Century* (London 1928).

LABOR. The valuation placed upon labor is a significant element in the ideology dominating any period, for it reflects the social structure as well as the scale of social values. Primitive peoples, especially warlike races, often display a marked disinclination toward labor; the necessary work devolves upon the women and upon foreigners, particularly those captured in wars and feuds, who are treated as slaves. It is only in a hierarchically organized society, however, that labor acquires a specifically,

social character. Slavery existed as a social institution in Asiatic and in European antiquity, in despotisms and in democracies. The immense buildings erected by the Asiatic despots or by the Egyptians represented the labor of armies of slaves, as did at a later period the factories of the Roman magnates, the silver mines in Spain or the fleets of Roman galleys. Slavery existed also in the Greek city-states, where the culture of the upper classes was possible only on the basis of slave labor. In all these very different social systems labor which today would be considered socially valuable was looked upon with disdain. This attitude is reflected in the biblical quotation: "In the sweat of thy face shalt thou eat bread" (Gen. III: 19). In the Asiatic despotisms contempt for labor became contempt for all performance. The names of great artists remain unknown; only the names of ruling kings are preserved. In ancient Greece the laborer even when he was a citizen was scorned as a creature of low breeding. In contrast is the high esteem in which the peasant was held in ancient China and Japan; here he ranked next to the knights and the learned classes, although he might be only a tenant laboriously eking out a bare existence.

The lowly position of labor in most ancient societies was the result in large part of the institution of slavery. Since citizens and slaves worked side by side, for instance, as artisans, the contemptuous attitude toward slave labor extended also to the work of the free citizen. In Rome the emergence of the skilled laborer and even of the skilled slave effected a loosening of the system, for it became necessary to give to slaves possessing special capacities a certain interest in their work, to provide them with better living conditions, considerable independence and at least the possibility of purchasing their freedom. This development, which undermined the old organization of labor, serves to substantiate the contention that real slave labor can be only undifferentiated mass labor controlled by physical force.

With the disintegration of slavery, hastened and extended by the appearance of Christianity, the way was paved for a conception of labor as possessing peculiar dignity and worth. The early Middle Ages marked the rise of the guilds with political rights and defensive capacities unknown to the corporations of antiquity. The guilds soon became the carriers of a peculiar ethics of labor. They created the structure within which developed the professional pride, the

appreciation of one's own labor, the justification of wealth by labor, which distinguish the bourgeois from the feudal mentality. The fact that labor was valued only as professional labor was another result of the guild organization of society. Although the guilds did extend into more fields than is generally realized, all labor outside of corporations and guilds was looked down upon and abandoned to the arbitrary action of officials. The independent artisans, the "outsiders" (*Bönnhasen*), the workers not legalized by guild organization but nevertheless often of great importance to the economic system, were held in contempt—until through a radical change in ideology free enterprise attained the highest esteem, while guilds and trade organizations sank into disrepute.

The powerful influence of the guilds and the political alliances they built up, at first spontaneously and later consciously, brought about a new attitude on the part of organized religion; the church now became a staunch supporter of the guild system. Christianity, however, like all other ethical religions was (according to Max Weber) originally anti-economic; it recognized no dignity in labor and looked upon work as only a means of livelihood. The New Testament exhortation to "walk worthy of the vocation wherewith ye are called" (Eph. IV: 1) is an expression of indifference. For the monks labor became a means to the ascetic life but it had no positive meaning, no value in itself. Although the guilds in the cities were able to temper this indifference to some extent, no complete transformation was effected until the rise of Protestantism. With the abolition of the cloisters Christian virtues could be practised only within lay institutions. An explicitly positive valuation of labor and its products and therefore also an esteem for economic dynamics itself first found expression in Puritanism. Calvin denied the independent importance of "good deeds," holding that these do not guarantee the achievement of grace, of eternal felicity, which is determined by an obscure and impenetrable decision of God but is nevertheless indicated by the success of the individual in the affairs of the world. An individual can best attain the state of grace by working "methodically" in everyday life for the glory of God. Asceticism, particularly in the form of rational work, became the supreme duty; and thus was introduced into everyday life esteem for labor, for the product of labor and finally for wealth. Wealth was valued not as a means of enjoyment

but as the warrant of a mode of life agreeable to God. This approach, however, led soon to the positive valuation of abstract acquisition, of profit for its own sake; in short, of a capitalistic conception of life.

With the development of the science of political economy the concept of labor received an independent significance. Although in the doctrines of Adam Smith and of Ricardo (the system of the physiocrats applied more to agriculture than to agricultural labor) labor appeared only as one of the elements of the economic process it was nevertheless considered as preeminently the source of productivity. Later when it was made the principle of value formation labor acquired an extra-economic significance, which can be seen most clearly in Marx' theories. According to the classical economists labor like land and capital is a factor of production. It is simply the human factor. In Marx' doctrine the concept of labor becomes, as do all economic concepts, a social category. For Marx labor is the achievement of the workers, not simply of all who work, and more particularly of those workers who in different social systems—as slaves, as serfs, as members of the guilds and finally as workers in shops and factories—by their work first made possible the creation of social wealth and thus the existence of the ruling classes. According to Marx the capitalistic profit economy rests upon the proletariat as the wage earning class, the surplus value of whose labor is appropriated and controlled through the legalism and the price mechanism of capitalist economy, as the surplus labor of slaves or of serfs was controlled through political force. Labor under the capitalist economy has only a fictitious freedom. In reality propertyless labor is narrowly limited by the market economy, continually reenforced by social coercion.

The marginal utility school of economists went back to a socially indifferent conception of labor as one element in the economic system. Recently, however, among this group too there has been a tendency to consider labor in its social form, as a propertyless wage earning class. All the anticapitalistic currents of the present time tend to lead scientific thought in this direction. Indeed once the social character of labor has been recognized, it is impossible to consider it outside of the social structure.

The various attitudes toward labor are of course very closely dependent upon the social

and economic status of the laboring masses in any particular society, while at the same time they help to create that status. The conception of the value of labor constitutes a determinate ideology, the source of which is not to be found merely in the actual state of the society or in the interests of its members. It has already been pointed out that in ancient Greece the institution of slavery necessarily diminished the esteem for labor, even influencing the whole structure of society, which came to be based on local instead of professional organization. This contempt for labor completely erased the differences between skilled and unskilled labor which are so important in modern thinking. In India—to choose a totally different social system—the religious castes were at the same time bearers of definite labor functions, and thus quite irrational values were placed upon different kinds of labor. Each of the several thousand castes has its own *dharma*, or code, which determines its rank and which is itself conditioned by the character of the profession. Thus types of labor which are respectable in Europe are in India regarded as very low when they are performed by low or "impure" castes. On the other hand, impurity of caste often reflects the character of the profession.

The valuation of particular kinds of labor has varied greatly throughout history. In Japan and China agriculture is the most respectable form of manual labor. In Europe the development of urban culture resulted in a contempt for agricultural work. While agriculture is praised as the source of means of subsistence, workers on the land, especially peasants, are looked upon with a certain disdain because of their lack of culture. European feudalism especially built up an ideology according to which only the idle life of the aristocrat was noble; the peasant, "the coarse fellow" and the city worker, the Philistine and the petty trader, were all treated with contempt. Thus a feudal system based upon the labor of others leads to an ideology which scorns all labor and so furnishes a moral justification for its own existence.

Until very recently the learned professions have been regarded quite differently from other forms of labor. Indeed as long as the ability to read and write was rare, the profession of writer or even more of jurist, priest, physician or state official was not considered as "work." If the members of these learned professions often held a not very enviable position in the courts of princes they were treated with marked

respect by the people. Only bourgeois society has really emancipated these professions and it has even put them in a dominant position for long periods. The fact that they lost caste in the second half of the nineteenth century was due in part to the increase in the number of intellectuals and in part to the fact that, as the legislative, administrative and economic institutions created by this epoch and adapted to its spirit became more and more intelligible and accessible, the aura which had surrounded Roman law and its practitioners in the sixteenth and seventeenth centuries faded, and the social status associated with all professions based on classical culture declined.

Special concern for labor as we find it in the modern world developed only with industrialism. Mass labor in ancient Asia, in Greece, Egypt and Rome was the object of despotic control. A benevolent attitude toward labor can scarcely be said to have existed. In the feudal period there was a more human attitude toward the household servants but not toward the serfs. The fate of the latter varied according to locality, the quality of the soil and the character of the people, but everywhere they were looked down upon and exploited. The so-called emancipation of the peasants was not a struggle on their behalf but for their domination. The state wanted to give them certain opportunities toward economic development in order to obtain higher taxes. The conception that society is founded on labor was no more prevalent in the Middle Ages than in antiquity. In the guilds interest centered in the work done by the master, his personal contribution; both journeymen and apprentices expected to become masters, so that the idea of socially inferior labor was almost completely absent. It is true that occasionally there were strikes and movements of opposition among the journeymen, but their aim was not to suppress the guilds but only to improve their standard of living within them.

Only with the formation of a proletariat composed of free individuals, propertyless and concentrated in large masses, did the labor problem become the very center of the social problem. The first industrial workers were recruited from among the proletarian weavers, then from among the unemancipated agricultural workers, the independent artisans and so forth. They were a motley crew working under a system of mechanization and division of labor, under the orders of foremen who were often brutal. Personally and formally, however, they were free;

they could when they found work elsewhere leave their jobs at any time. They were not attached to a locality or to a factory, and they could better their situation with improving business conditions. They were the first great class of society that forged or suffered its destiny outside of legal chains. As whole cities were erected around the factories, the workers increased in number more rapidly than did any other part of the population. Indeed the rapidly increasing wealth resulting from industrialization was made possible only by an ever growing working class. It was therefore natural that the question should soon arise as to the part played by labor in the process of the creation of wealth and as to its rightful share in the social product.

Since Adam Smith and Ricardo political economy had placed labor in the center of the theory of value. Consequently there had arisen the problem of the part played by land and capital in the creation of value. Karl Marx declared that the income from land and capital must be considered theoretically as a deduction from workers' wages. The marginal utility theorists took as their point of departure consumption rather than the cost of production and found the source of value in the valuation of the product by the consumer. Neither theory answers the question of the relative productivity of labor compared with that of other classes. All modern economic theories recognize that labor produces value, industrial labor as well as agricultural. There remains only a controversy with regard to the significance of economic leadership—the labor of management and coordination. When the technical aspect of modern production is taken into consideration, it is impossible to deny the necessity of cooperation and coordination. Particularly is large scale production impossible without special organizing ability which can assure the efficiency of the technical processes, establish a plan of production and make decisions about necessary changes in the industry. Within the capitalistic system production on a large scale, especially increasing production, cannot be achieved without the work of owners or managers and their staffs of superior and inferior employees. There can then be no absolute answer as to how the product can "justly" be distributed among these groups of producers. Actual salaries and wages always depend partly on the monopolistic position of a given industry; under a system of free competition they would be quite different. There are no

"natural" wages, since, as Marx knew, in every system the level of wages is influenced by "social and historical factors"; that is, by the existence of monopolistic organizations. The conception of the participation of labor in the creation of social wealth can thus be considered only as a general leading principle in the distribution of that wealth.

The actual organization of labor has varied greatly in different periods. It is likely that among many primitive races there was no conscious organization of work, which was done with very primitive tools and with little attempt to develop more practical methods. Moreover labor in primitive societies, especially in tropical countries, is closely related to religious rites and to artistic activities. For technical, often even for psychological, reasons the greatest part of primitive labor is performed collectively, by a working group, for which songs or the rhythmic striking of an instrument regulate and guarantee the performance of a given quantity of work. Such group work exists today in transportation, agriculture and similar occupations. The organization of labor among primitive people is based either on the family—the large family in itself makes possible a certain division of labor—or for religious work and eventually for work done for the leader of the group, which frequently assumes a religious significance, on a larger unit.

Only when society became more differentiated socially and economically did the various classes of laborers acquire specific social status. Then such distinctions became marked. The separation between agricultural and industrial labor occurred as a result of the division of labor on the large estates of antiquity as well as on the mediaeval farms burdened with the *corvée*. The soil yielded a sufficient surplus to provide not only for the agricultural laborers and tenant farmers but for spinners and weavers, blacksmiths, carpenters, masons, shoemakers, tailors, carpet weavers, coopers and many others employed in the lord's household. Specialization of labor was the rule, developing most markedly in the guilds. Karl Bucher estimates that there were nearly two hundred separate professions at the beginning of the fifteenth century. The guild was not merely an organization of labor and industry but also a political corporation. The guilds endowed chapels in the newly built churches; they armed their members; each guild defended its part of the city walls; guild representatives sat in the city councils.

The industrial revolution could not have occurred within the guild system. Factory industry and to an even greater extent mechanized industry required freedom in the utilization of market opportunities, in the employment of working forces. The guild regulations and customs which had to a certain degree protected the journeyman and the apprentice had no validity in the factory; hence the early days of capitalism witnessed an immoderate use of women's and children's labor without limitation of the working day, conditions which were unknown at the height of the guild system. The workers in the early factories were unskilled or only partly skilled; some had had previous handicraft training. For a long time, however, the different trades remained distinct; indeed the transformation of trade unions into industrial unions is only a very recent development. It is in the so-called new industries—the automobile industry, the machine industry and the like—that the organization of workers according to industries rather than trades has proceeded most rapidly. As a result labor organizations have become more strongly colored by a general class character and the workers have become class conscious rather than profession conscious, although membership in a trade is still of importance and although, especially in Europe, even at the present time many workers are first trained as handicraftsmen.

Of equal importance with the union of different trades within the factory in developing a new status and a new conception of labor was the mechanization of industry. At first the artisans resisted the introduction of machinery and destroyed the machines which deprived them of their bread. But when as a result of the rapid spread of factories and of increasing demand for workers for the construction of railways and new industries unemployment decreased or disappeared, there developed the theory that new forms of production automatically absorb all the workers thrown out of jobs as a result of technological improvements. This theory was largely accepted by the trade unions and created among the workers a more tolerant attitude toward the introduction of machines and the mechanization of industry. Since the World War keener theoretical analyses and added experience have brought this theory into disfavor. There is an increasing realization, especially among the working classes, that technical progress must be controlled.

Modern industrialism first created class con-

sciousness among the workers. The importance of the trade, of the kind of work performed, has become secondary to the common class destiny of all workers. It is true that class consciousness is frequently weakened or delayed by differences of profession, of ability, of the relative importance of particular industries; by divisions of sex, age, race and nationality. In the principal industrial countries, however, these differences undoubtedly tend to lose their importance for social action, especially since increasing competition makes ever more acute the struggle of the various classes for their share in the social product, while local and professional differences in the levels of wages, even for skilled and unskilled labor, are gradually diminishing. On the other hand, the psychological currents conducive to the development of class consciousness have thus far had little opportunity to affect the salaried employees, who constitute an increasingly larger portion of the dependent class. Moreover in many European countries, especially in Germany, the workers are more sharply divided by different social philosophies—socialistic, communistic, Christian—than by differences of trade or industry.

In organization and in efficiency of labor the present epoch represents the highest stage of capitalistic economy yet attained; never before in history have productive forces been so fully developed. At the same time never before has the great bulk of the working masses been so aware of its situation and so united as a class. This solidarity has become international, however, only in the last few decades. Whereas in previous centuries only scholars (through the Latin language and humanism) and the nobility (through the French language and common class interests) were internationally united, modern means of communication and modern methods of production have created an international solidarity of producers, both capitalists and workers.

Within each of the great industrialized nations the working class has become for the first time in history an important economic and political force. The World War greatly hastened this development. Far from wiping out class stratifications it greatly increased the influence of the working class. This first resulted in a rapid increase in the wages, and thereby an improvement in the standard of living of the working class, and in a multiplication of collective contracts. As the working class, at least in Europe, has become an active and decisive

factor in politics, the very principle of capitalistic economy has come into question. The problem as to whether the organization of production should be entrusted to the capitalist alone is being discussed on all sides. Indeed the importance of the proletarian movement lies in the fact that it has brought into actual discussion the problem of the economic structure of society. Certainly this problem is far more significant than that of the level of wages or of the share of the working class in the social product. The conception of an organization of the entire economy in the interest of society as a whole has been gaining more and more adherents since the war and especially since the crisis which began in 1929. In particular the development of the Soviet planned economy has spread the idea of such an economic organization and has thereby greatly enhanced the significance of labor in modern society.

EMIL LEDERER

*See:* LABOR MOVEMENT; ECONOMICS; ORGANIZATION, ECONOMIC; TECHNOLOGY; OCCUPATIONS; PROFESSIONS; SLAVERY; SERFDOM; FEODALISM; FORCED LABOR; PEASANTRY; PROLETARIAT; GUILDS; TRADE UNIONS; CLASS; CLASS STRUGGLE.

**LABOR BANKING.** Labor banks are incorporated profit making institutions carrying on a general banking business the majority of whose stock is owned by one or more trade unions as organizations. They are to be distinguished from people's banks or cooperative credit organizations—voluntary non-profit mutual aid associations organized to provide credit on a personal basis—which have functioned for many years in Europe, in some of the Asiatic countries and to a lesser extent in the United States. While the proponents of American labor banking utilized the achievements of people's banks as convenient propaganda material, they did not emulate the cooperative features and purposes but conformed to ordinary banking practices. The two types of popular banking moreover differ in their class character: cooperative credit organizations are essentially middle class institutions, while labor banks are an aspect of the institutionalism of organized labor. Labor banks are also to be distinguished from cooperative banks, such as the Cooperative Wholesale Society Bank in England, which do not accept purely business accounts and act mainly as bankers for the cooperative movement.

Although labor banking reached its highest development in the United States, whence it influenced the formation of the most important

European labor bank, the Bank der Arbeiter, Angestellten und Beamten of Germany, the first labor bank was organized in Belgium in 1913. Belgian credit unions despite their growth had never been closely identified with the trade unions, except through individual members. The Banque Belge du Travail was organized to carry on a general banking service for trade unions, cooperatives and the Labor party, which also owned the stock of the new institution. The bank has a number of branches and in addition to a personal banking service ministers to the financial needs of labor, cooperative and industrial enterprises, from which it also receives deposits. There were no new labor banks until after the World War. A labor bank was organized in Denmark in 1919, in Norway in 1920, in Palestine in 1921 and in Austria in 1922. The stock of the Palestine Workers Bank is owned by the Zionist World Organization and the trade unions, while in the case of the other banks the stock is held by trade unions and other labor organizations; no individual ownership of stock is permitted. While labor party and cooperative organizations may own stock in the labor banks, their ownership and control are essentially trade union.

European labor banking is most highly developed in Germany, where there are three labor banks. The Deutsche Volksbank, organized in 1921, is conducted by the Christian trade unions, while the Deutsche Wirtschaft Bank, organized in 1923, is under control of the Hirsch-Duncker trade unions. Both banks are relatively small. The most important of the labor banks is the Bank der Arbeiter, Angestellten und Beamten, organized in 1924; five years later it had resources of 163,180,000 marks and a turnover of 2,787,000,000 marks. This bank is controlled by the central organization of the German trade unions, the Allgemeiner Deutscher Gewerkschaftsbund, with a minority stockownership by the Deutscher Beamtenbund and the Deutsche Krankenkassen. The Bank der Arbeiter, which has made substantial progress since its establishment, receives deposits from the affiliated organizations and finances enterprises conducted by trade unions and cooperatives. Another bank, the Deutsche Landvolk Bank organized in 1923, is not strictly a labor bank as it represents the employers as well as the Zentralverband der Landarbeiter.

The opening of the Mount Vernon Savings Bank with \$160,000 capital and \$40,000 surplus in the Machinists' Building in Washington, D.

C., on May 15, 1920, is generally viewed as the actual beginning of the labor banking movement in the United States. This is not actually correct, however, as the sponsoring union, the International Association of Machinists, owned the bank only in part and a majority control was secured by inclusion of the considerable holdings of the leading union officers. Labor banking as a nation wide movement may properly be said to have begun on November 1, 1920, when the Brotherhood of Locomotive Engineers' Cooperative National Bank opened for business in Cleveland with \$651,000 paid-in capital. Under the influence of Warren S. Stone, who had studied the people's banks in Europe, the Brotherhood of Engineers had decided as early as 1915 to open a labor bank at the opportune moment, but the World War delayed realization of the project. The Amalgamated Clothing Workers of America was the next large union to join in the movement; this organization opened one bank in Chicago in 1922 and another in New York in 1923. The Engineers' banking activities expanded rapidly. Within a few years they had launched several more banks, bought a large interest in an important Wall Street bank and branched out into a variety of subsidiary and collateral banking, investment and real estate ventures. Their activities involved tens of millions of dollars of capital investment and ran into a general turnover of hundreds of millions of dollars in sales of stocks, bonds and other securities.

Unions affiliated with the American Federation of Labor joined the banking movement slowly and half heartedly. Its leaders viewed with disfavor the diversion of union funds and energies into extraneous channels that were not well charted. As far back as 1904 the federation rejected a motion to organize several labor banks where unions could deposit their funds. The proposal was again rejected ten years later and again in 1918. But the spectacular success of the Engineers' banks or, more accurately, the publicity which made their quantitative success appear as a qualitative success weakened the resistance of the A. F. of L. leaders. In 1923 the Federation Bank of New York opened for business with \$500,000 capital and surplus subscribed by practically every A. F. of L. international union. It claimed to be "the most representative union labor bank in the country." Nevertheless, the central leadership of the A. F. of L. continued its warnings against the new financial attraction. By 1926 labor banking had



reached its peak; there were then thirty-six labor banks with a combined capital, surplus and undivided profits in excess of \$13,000,000 and total resources close to \$130,000,000. Connected with the banks were a number of investment trusts and securities companies, and a considerable number of banks were proposed or partially promoted. This development of labor banking was greeted by the financial community with general friendliness mixed with indifference. Many thought the new banks might attract the hoarded savings of workers and that they might also increase the conservatism of organized labor. In some cases, however, general friendliness rapidly turned into hostility; thus one important labor bank faced with a severe run was told by the Clearing House Association, to whom it appealed for aid, to "go to the labor unions for help and not ask the bankers," although up to the moment it closed the bank was declared solvent by the comptroller of the currency. The clearing house refused to do for a labor bank what it later did for commercial banks in the city.

American labor unions were prompted by several motives in organizing labor banks. The years 1920 and 1921 were marked by aggressive open shop drives. Labor leaders felt that bankers were behind the drives against the very unions whose money their banks carried, capitalized and made profit on. The conviction was widely held that labor could retaliate effectively if it mobilized its financial resources to serve labor's own ends. Walter F. McCaleb, first vice president of the Engineers' Cooperative National Bank, suggested that "if 20,000,000 workers were each to save \$1 a week and regularly deposit this money in their own institutions, this whole civilization of ours would be changed within the next five years." Peter J. Brady, president of the Federation Bank of New York, estimated that "of \$25,000,000,000 annually paid in wages to workers in American industry, from \$6,000,000,000 to \$7,000,000,000 is saved in various ways, and that labor banks hoped eventually to control." Taking into account the large accumulated funds and approximately \$25,000,000 paid out annually in various benefits, the unions considered that a better return on their resources could be secured by organizing banks and going in for investment. The unions would render their people a genuine and appreciable service by creating investment institutions for the savings of labor.

In addition to the purely financial considerations the unions envisaged an extension of union

power into new fields. Conservatism or progressivism was not the line of division between the leaders who favored labor banking and those who opposed it. Rather it was a division between the labor activists and their more passive colleagues. Labor banks could do more than extend financial help to unions engaged in strikes or lockouts; with their financial resources they could help "fair" employers who recognized the union and thereby strengthen unionism. One of the purposes of the International Association of Machinists in organizing its bank was to render financial assistance to an employer who was unable to secure credit through the regular channels because he recognized the union; and this specific case was generalized in labor bank policy. Some of the labor leaders had greater objectives; they believed it was within the power of labor, if all the workers' money was mobilized by their own financial institutions, to make substantial inroads into the money control which they considered oppressively exercised by Wall Street. Others hoped to get on the controlling boards of industrial enterprises which were unfriendly to organized labor and convert the respective managements to a more cordial attitude. To accomplish this end they aimed to utilize the power of their banks as money lending institutions and also to secure the confidence of employee stockholders and act as their proxies in the determination of the corporations' labor policies. Warren S. Stone saw labor entering upon a new, third cycle of development. The first cycle or phase, a stage necessary for the development of group solidarity, had been characterized by the growth of class consciousness; the second, a phase which "necessitated a period of warfare involving the use of force, sometimes economic, sometimes physical, on both sides," by defensive struggles for recognition of unions and for the principle of collective bargaining. The third cycle upon which labor was entering was "one of cooperation rather than war, and the most striking evidence of this phase is the labor bank." This program was an expression of the ideology of the "new capitalism," which influenced both labor and capital in the period before the depression which set in in 1929. Several labor banks emphasized the development of institutional services to the workers, such as character loans at reasonable rates of interest and with equally reasonable demands as to collateral security or the financial standing of comakers, long term loans to home builders and the financing of cooperative housing developments.

The decline of the movement, which began in 1927, did not at once become evident. On the eve of the depression early in October, 1929, there were still in existence twenty-three labor banks with a total of capital, surplus and undivided profits well over \$10,000,000 and total resources of \$110,000,000. Three banks, representing about 45 percent of the total capital of all the labor banks and an even larger part of the total resources, led in the field: the Federation Bank and Trust Company of New York, the Engineers' Cooperative National Bank of Cleveland and the Amalgamated Bank of New York. But the Engineers' enterprises were in bad shape. They had lost many millions of dollars in questionable investments, in the organization of holding companies, in speculative land investments in Florida. Gross mismanagement and corruption were revealed. The imposing structure of banking and investment institutions collapsed involving enormous losses to the union and heavy special assessments on the members. Moreover the Engineers' enterprises were no exception. Labor banks proved vulnerable to temptations of speculation and excessive profit making, and they neglected the importance of competent banking personnel. The business depression revealed the weaknesses of the movement and caused many more terminations. By December 31, 1931, there remained in the field only seven labor banks with total resources of \$30,000,000, including capital, surplus and undivided profits of \$3,615,000. The three largest banks were the Amalgamated Bank, the Telegraphers' National Bank of St. Louis, Missouri, and the Mount Vernon Savings Bank.

The weaknesses which led to the collapse of the labor banks are in general weaknesses of the labor movement itself, from whose characteristic division of forces and crossing of purposes the banks suffered. Many banks fell prey to the game of union politics and disregarded the problem of competent non-political management. The essentially capitalist orientation of the American labor leaders led to imitation by labor banks of high pressure speculative and promotional methods. Although the labor banks started with many cooperative features in their charters, these were soon forgotten. It was originally planned to limit the number of shares an individual could own, to limit the declarable rate of dividends and to prorate a share of the profits to depositors, all with a view to restricting profit making and forestalling individual domination of labor banks. But in performance in most cases

the cooperative features were amended out of existence or modified beyond recognition in favor of the practices of unrestricted business enterprise.

Nor did the labor banks receive the confidence and support of the workers. The workers did not choose to deposit their savings (enormously exaggerated by the labor bankers) in labor's financial institutions, which were in some cases presided over by leaders who had failed to achieve much success in fields supposedly their own. Labor men together with liberal professionals sympathetic to labor supplied less than one third of the labor banking business. The volume coming from small business men attracted to the labor banks, because they offered credit facilities on easier terms than did the commercial banks, meant temperamental, panicky withdrawals and frozen assets in times of crisis.

While the American labor banks underwent their dramatic rise and fall, the European labor banks made steady progress. In the two years 1928 and 1929 the Bank der Arbeiter, Angestellten und Beamten increased its deposits 50 percent; in the same period there was a decline of 31 percent in the combined resources of the American labor banks. The difference in development reflects important differences in organization and policy. The European labor banks are centralized, national institutions organized under control and enjoying the protection of the whole trade union and labor movement of their respective countries. The American labor banks were primarily decentralized local institutions organized and owned either by single national unions or by local groups of unions and individuals who appreciated the profit making opportunities and contact values of the business. European labor banks moreover were primarily established as auxiliaries and service agencies of the labor movement. They do not have the profit making outlook of commercial banking business. A large volume of labor banking business awaited them: management of the funds of the unions, of the political party and of the well established consumers' and producers' cooperatives. Investment in municipal and other social enterprises offered an outlet for surplus funds. If under these circumstances profits were not likely to pile up rapidly, security and solvency were not easily jeopardized. The American labor banks on the contrary were primarily business enterprises organized to provide profitable financial opportunities for the national union or the local group which operated the bank. As small banks they

could secure only the left overs of the business which the large banks were not anxious to handle. A few labor banks sought to establish institutional services in special areas of activity, but the majority operated as small competitive banks at a time when small banks had to fight hard to survive. Both the financial situation and the character of the trade unions in general militated against the permanent success of American labor banking.

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See: TRADE UNIONS; INDUSTRIAL RELATIONS; LABOR-CAPITAL COOPERATION; CREDIT COOPERATION.

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LABOR BLACKLIST. See BLACKLIST, LABOR.

LABOR-CAPITAL COOPERATION emphasizing the harmony of interests between labor and capital aims to reduce or eliminate conflict of interests, to regularize production by preventing strikes and so to increase labor's output as to benefit both wages and profits. It is part of the understanding under most labor-capital cooperative relations that a share of the gains of cooperation will on some calculable proportional basis accrue to labor; in addition labor

is offered the further advantage of stability of employment. The practise which the term represents comes third in the evolution of labor-capital relations—non-recognition of unions, collective bargaining, cooperation to insure more efficient production and, in the larger aspects, social peace.

Labor-capital cooperation may assume forms which repudiate independent unions or collective bargaining and involve the direct subordination of labor to capital. This occurred in the United States in the period after the Civil War, when labor-capital cooperation was urged as an offset to unionism; it still occurs today in many industries where "cooperation" is forced upon the workers through company unions and employee representation schemes. This involuntary cooperation prevails also in Fascist Italy, where cooperation functions through unions organized and controlled by the government and not through independent unions of the workers. In more representative and progressive usage, however, labor-capital (and in the United States labor-management) cooperation represents an industrial relationship in which labor and capital recognize one another's independence and voluntarily agree to cooperate in common tasks. Capital concedes to labor the right to organize and act through its own representatives; labor assumes an active interest in and sometimes partial responsibility for the progress of production. In this sense labor-capital or labor-management cooperation constitutes an advanced phase of collective bargaining.

The term labor-management cooperation in American usage or in the alternative form union-management cooperation presupposes recognition of unionism as an independent force cooperating with management as does the term labor-capital cooperation in the European sense. Both rest upon recognition of unionism and collective bargaining. The one covers an American orientation, the other is characteristic of the European labor mind. Capital, when conjoined with labor, tends to emphasize the social aspects of industry and ownership, the contest of property rights and class interests behind the immediate issues of cooperation; hence labor-capital cooperation assumes general political forms and operates on a national scale, concerned with larger issues and solutions. The use of the word management rather than capital, while it expresses the unusually high development in the United States of functional separation of capital ownership and management, also denotes an

engineering or technological approach to the issue and implies interest in the immediate advantages of a simple bargain relationship. Labor-management cooperation consequently is animated by an essentially parochial spirit, ignores larger social issues and is unconcerned with property rights and class struggle.

The forms and development of cooperation differ greatly in American and European experience. The range of difference is from mere elaboration of traditional collective bargaining by the creation of additional, better equipped and permanently functioning machinery for realizing the ends of all trade agreements—industrial peace and uninterrupted production—to some participation of labor in the management of production. While in its major concrete aspects labor-capital cooperation represents no basic departure from the general course of orthodox unionism and collective bargaining, its theoretical implications and social ramifications are considerable, particularly as they are revealed in European experience. Although influences and efforts striving for labor-capital cooperation were at work, theoretically and practically, for many years before the World War and gained in momentum as socialism in Germany, syndicalism in France and laborism in England grew in power and importance, the specific practise now covered by the term took shape under the impact of forces generated by the World War and accelerated during the post-war period. These forces were the intensified application of science to industrial processes and the emphasis on rationalization, mass production of consumer goods and the consequent intensification of competition in both the home and world markets, the precarious state of business in many countries and of certain branches of industry in nearly all countries, the growing unemployment due in part to technological labor displacement in industry and agriculture, the rapid growth of labor unionism in particular and of the power of labor in general, and the strengthening of revolutionary tendencies in certain countries.

As the forces and conditions which led to cooperation did not arise simultaneously in all countries or operate everywhere with equal effect, the forms and objectives of cooperation have varied in time and place. In the United States labor-capital cooperation in the involuntary form imposed upon labor by company unions and employee representation plans developed out of the same general forces which produced voluntary cooperation in Europe.

Labor-management cooperation, however, was a product of the unusual American prosperity which flourished from 1923 to 1929; one of the results of prosperity was to weaken unionism, thus forcing the consideration of new policies (among them, for example, labor banking) and influencing labor leaders to propose cooperation with management as one method of strengthening the unions and collective bargaining.

The vital distinction between American and European experimentation with labor-capital cooperation is this: in most American cases, typically sporadic and local, it was primarily labor which sought to induce capital to cooperate, while in the European experiments, planned and national in scope, capital sought labor's cooperation. Trade unions in the United States, insufficiently organized and practically eliminated from the basic industries, sought to realize on capitalist prosperity by endeavoring to convince management that greater efficiency could be achieved by winning the workers' good will. Without the additional advantage of power in politics, such as is yielded by the influential political parties which labor controls in most European countries, American labor was able to use only moral admonitions and warnings against possible disaster. The distinction reflects differences in the character of the respective labor movements: European labor has appeared in the practise and discussion of labor-capital cooperation as a distinct social class striving for power, while the American practise and discussion of labor-management cooperation have avoided social theory, emphasized labor's local interests and stressed the purely business aspects of cooperation.

The practise of labor-capital cooperation reached its fullest development in Germany. During the World War, when *Burgfrieden* was urged upon labor and capital, voluntary joint associations of employers and workers, known as *Arbeitsgemeinschaften*, were organized to effect cooperation between labor and capital; they were, however, dissolved in 1924. Meanwhile economic decline aggravated international competition and the pressure of reparations and forced consideration of an elaborate program of rationalization. For such a program it was necessary to secure the consent and cooperation of German labor, which was strongly organized in both the economic and the political fields and enjoyed legal status as a class. Unwilling or unprepared to stake its fortune on the overthrow of capitalism, German labor accepted labor-capital co-

operation on a give and take basis. The declaration of the German General Federation of Trade Unions and General Federation of Unions of Salaried Officials stated conditional terms of acceptance in the form of specific demands: real wages must rise; management must work closely with the work councils (shop organizations which have legal standing in Germany); social hardships resulting from rationalization must be compensated; rationalization must be carried out in each industry as a whole; prices must be reduced; opportunities for promotion of workers must be provided as well as assurances given that the management will be efficient; comprehensive unemployment insurance must be guaranteed; wealth must be taxed directly and adequately; tariffs on imported foodstuffs and raw materials must be reduced; a planned credit system must be provided to meet new conditions in industry. Having outlined so complete a program of labor-capital cooperation, German labor simultaneously set forth its socialist view of the limitations of cooperation: "So long as private enterprise exists, it will produce economic classes which will struggle against each other to decide their respective shares of the proceeds of industry. We hold this struggle to be unavoidable, because an impartial scientific agreement on this question is not possible. But without prejudice to this view we also believe that, for the solution of various economic, financial, social and political problems, a joint effort by all parties is worth while with the object of overcoming the present crisis and developing the productive capacity of German industry." Through this cooperation the unions expect increasingly to acquire functional power in industry and thus gradually to realize the new social order. While the revolutionary elements in the German labor movement, organized in independent communist unions and the Communist party, regard labor-capital cooperation as an abandonment of the class struggle and surrender to capitalism, Catholic labor unions have been in line with their general ideology and traditional attitude the most persistent exponents and faithful followers of the idea that capital and labor are constituents of a single organic whole and that there must be an essential harmony of interests between employers and employees.

As in Germany the problem of labor-capital cooperation acquired new significance in Great Britain during the World War. One result was creation through government initiative of the Whitley councils, which were intended to form a

sort of industrial parliament, give labor some representation in management and realize peace and cooperation between labor and capital. The councils were partly an answer to the radical workers who during the war had formed shop committees acting independently of the trade union administrations. Whitleyism never acquired any real practical importance. The problem of labor-capital cooperation assumed new significance because of the decline of British industry in the post-war period. Discussions of the problem eventuated in 1928 and 1929 in two conferences, known as the Mond-Turner conferences; Sir Alfred Mond (Lord Melchett) was head of the employers' group and Ben Turner, chairman of the General Council of the Trades Union Congress, was head of the labor group. The conferences were brought about by the uncertain state of both capital and labor. Several important industries were facing virtual collapse under the joint pressure of German rationalized industry and American mass production and superior wealth in raw materials. The labor movement was considerably weakened by the collapse of the general strike in 1926 and the defeat of the miners' strike. It was generally felt that traditional trade union methods did not have much positive achievement to offer. The supporters of cooperation argued that labor could not watch indifferently the breakdown of industry and production, England was not a self-sufficient country, rationalization and the consequent strengthening of industry were issues of primary importance and labor's position would eventually be stronger if it made itself a part of the rehabilitation process. Furthermore they did not anticipate an immediate and complete breakdown of the capitalist system but rather a slow, long drawn out wearing away of its strength, out of which new developments might come, temporary and partial revivals; hence, it was argued, labor would profit by taking an active part in this evolutionary development. Against this the opponents of cooperation contended that it was not the business of labor to help decaying capitalism to gain a new lease on life. Even if an immediate collapse might be averted and a temporary restoration of the functioning of the capitalist system achieved, it would sooner or later break down again under the weight of the conflicting forces which operate in the social order and labor might as well face the basic issue now rather than endeavor to postpone the unavoidable; if labor embarks upon the cooperative venture it will not save capitalism or prevent

eventual disaster, and by acting the minor partner in the capitalist game it will take the edge off the class struggle, demoralize its own ranks and throw in jeopardy its chances in a final struggle for power. The Mond-Turner conferences conceived labor-capital cooperation as involving discussion and joint action on rationalization, unemployment, labor supply, the organization and control of industry, and other social and economic problems of industry as well as of wages and hours. Mondism, as this policy of cooperation came to be known, involved full recognition of bona fide labor unions, something like representative government in industry by means of work councils, employee stockownership, conciliation of industrial disputes and machinery for continuous investigation, criticism and conference. There was strong opposition to the conference plans among a minority of the trades unions and even stronger opposition among influential groups of employers. This opposition and Sir Alfred Mond's death resulted in the collapse of the movement.

Labor-capital cooperation in England and Germany and to a lesser extent in other European countries is the result of economic decline and the increasing power of labor. Where labor is strongly entrenched capital is compelled to secure labor's voluntary cooperation in order to put through necessary measures and avoid disputes which may further weaken an already weakened economic fabric. On the other hand, labor can no longer concern itself exclusively with hours and wages: in a period of economic decline labor is forced into larger action—either cooperation with capital or the overthrow of capitalism with labor assuming the responsibility for social reconstruction. Labor-capital cooperation is thus the alternative to revolution.

In the United States the unions suggested cooperation as a means of strengthening their position, but the offer was accepted by management mainly as a means of solving certain aspects of the modern work process involved in scientific management. In non-union industries scientific management might be imposed upon the workers by means of company unions and similar devices, but in union industries it depended considerably upon overcoming union opposition by accepting cooperation—a much narrower consideration than that involved in European labor-capital cooperation. This is the most important reason why none of the American labor-management cooperative ventures has been large enough to assume to deal with the

whole labor-capital issue or with all the problems of an entire industry on a national scale. Their cooperative content ranges from rather narrow and technical agreements, seeking to fortify collective bargaining by labor assisting in waste elimination and increased output, to schemes which carry a measure of authority for labor in determining work terms in relation to the state of the business. In no case does labor assume any real measure of industrial control. Labor-management cooperation in the forms thus far developed is applicable only where labor is still appreciably skilled and the workers' initiative can increase output; it is, however, inapplicable to mass production industries where the workers are paced by the machine.

The B. and O. Plan, best known of all American labor-management cooperative experiments, originated in 1923 in the Glenwood repair shops of the Baltimore and Ohio Railroad, whence it spread so that by 1931 it was actively in effect in the mechanical departments of four major railroad systems of the United States and Canada covering about one sixth of the combined mileage of the two countries. The B. and O. Plan, as interpreted by its leading exponent, Otto S. Beyer, rests on three main principles: mutual recognition by labor and management and their cooperation for improved service and elimination of waste; fair division by labor and management of the gains of cooperation; and stabilization of employment and perfection of joint administrative machinery to promote cooperative spirit and effort. Liberal interpreters of the B. and O. Plan were at one time willing to see in the extension of the arrangement a gradual process of substituting workers for owners, with industry eventually operated with capital "hired for a fixed and guaranteed wage," thus abolishing the profit motive, and with efficiency of operation maintained by the cooperation of "trained and conscientious management, public regulation with adequate standards of performance, and the enterprise of organized labor seeking its ends through better service." The really potent urge on the part of management to view the B. and O. Plan with favor sprang from the technical peculiarities of the maintenance and repair departments of the railroads. In 1928 the outlay for this part of work on Class 1 carriers in the United States comprised 26.4 percent of total operating expenses, decidedly a large expenditure. It was reasonably expected that willing workers inculcated with cooperative spirit and anticipating tangible gains would

do better work than contractors or workers devoid of that incentive and would thus increase efficiency, regularize production and reduce disputes. This proved to be true, but it has also been generally admitted that "the companies receive more lucrative returns from the practises of cooperation than do the men." As to stabilization of employment, it is not by any means certain that the B. and O. Plan accomplished any more than ordinary collective bargaining could achieve. There were in some instances other motives favoring cooperation; the government owned Canadian National Railways, for example, wanted to rally the political strength of labor in support of the experiment in nationalization against the efforts of private business interests trying to thwart it.

Another labor-management cooperative experiment, the National Council on Industrial Relations for the Electrical Construction Industry, was constituted in 1920 with an equal representation of employers and the union, the International Brotherhood of Electrical Workers. The workers' right to organize was accepted as basic in the arrangement, but simultaneously the abandonment of the "philosophy of power and struggle" was emphasized. The industrial philosophy of the council reduces the major causes of disputes between workers and employers to intermittent and shifting employment, price competition and the lack of any general and active understanding of the indissoluble partnership which exists in industry between management and labor; the council seeks to remedy these evils. After ten years of experience with the National Council on Industrial Relations resulting in an almost complete lack of tangible achievements, the Electrical Guild of North America was formed with a view to further more aggressively "industrial cooperation in the electrical construction business on a scale hitherto unknown and untried." An authoritative spokesman for the union thus describes the guild plan: "It insures democracy by dealing with the voluntary society of the workers; it guards management by making it the central source of power in the industry; it establishes industrial government without aid of the state; it secures stability without fixity; it elevates craftsmanship and technology to places of prominence. It has features not dissimilar to those of the once-projected Guild Socialism, with the added virtue of being a going concern." To which might be added "and free of the vice of tending to weaken vested interests."

The case of the Rocky Mountain Fuel Company closely cooperating with the United Mine Workers of America is interesting in its inclusion in the cooperative plan of sales promotion by labor. It is in a way a case of labor-management-consumer cooperation. This arrangement followed a protracted sanguinary struggle against unionization wages by the company under an earlier administration, together with other coal companies in Colorado. The organized labor movement in the state and the Colorado Farmers' Union actively assisted the company to market its coal as encouragement to a corporation which recognized unionism in the midst of a non-union coal center. The general public was converted to that view with the result that the company's retail sales grew considerably. This plan is obviously limited in its application, since the competitive advantage of labor's help in consumer sales would disappear if the plan embraced any considerable number of companies in the industry.

In the X-Construction Plan in the men's clothing factories of the Hart, Schaffner & Marx Company of Chicago, introduced by the company and the Amalgamated Clothing Workers of America in 1924, there appeared elements of labor responsibility for production with a share in control over industrial and business policy. Although spread over a limited area the X-Plan was the farthest step taken by labor-management cooperation in the United States. Under the arrangement which remained in force for several years the union assumed responsibility for a major part of the production process, namely, the tailoring of the garments after the raw material left the cutting rooms. It was a clear case of rationalized production under joint labor-management auspices with the main objective of cheapening production costs and lowering selling prices of the product so that larger sales, re-orders and consequently more work in the shops might be achieved. The workers relinquished certain customs and rules restricting output and expected to be compensated by the gain in volume of available work and the relative employment security that would follow increased sales. The cooperative contribution of the union consisted in placing at the service of the business the workers' accumulated industrial competence, which enabled the company to meet customer style requirements with progressively smaller labor costs and substituted team methods and machine work for costly individual handwork. The larger objective of the experiment

was to stabilize employment by supporting a large scale industrial enterprise against the reckless competition of non-cooperating employers. Yet the union could not logically withhold its cooperation from other manufacturing concerns, however keen their competitive practices, if they agreed to deal with labor on a union basis. Hence only one objective of union-management cooperation, stabilization of employment conditions, was met, and that only in part; the major objective, that of defeating reckless competition, was not achieved.

The economic depression which began in 1929 dealt a severe blow to those proponents of labor-management cooperation who saw in the practise a means of solving the fundamental issue between labor and capital. On the other hand, the experience of cooperation, wherever it was practised by strongly organized union groups, demonstrated the positive contribution which labor interested in the production process as a whole can make to industry if its efforts are not blocked by the operation of the profit motive. This positive demonstration of the value of labor's interest in production has given practical meaning to the issue of economic or social planning, which would take into account all the factors in the productive process. It has also emphasized the significance of the power element in the situation: economic concessions are not secured by moral invocations. Carried on in times of normal business activity, labor-capital or labor-management cooperation need not, as its opponents claim, take the edge off the class struggle or cause a loss of labor militancy, provided the area of application is a whole industry or the whole of national industry and cooperation is seen as one aspect of larger issues. The additional competence that labor gathers in the controlled exercise of cooperation is an asset not unlikely to prove of determining significance in the struggle for power. The relation of cooperation to the theory of "harmony of interests between labor and capital" is not necessarily generic, but it is tangent. The acceptance by strongly organized unions of a cooperative plan of procedure need not signify an *eo ipso* abandonment by labor of all opposition to the social status quo, although experience indicates that it undoubtedly tends to tame the manifestations of opposition.

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See: LABOR; LABOR MOVEMENT; TRADE UNIONS; COLLECTIVE BARGAINING; INDUSTRIAL RELATIONS; INDUSTRIAL RELATIONS COUNCILS; ARBEITSGEMEINSCHAFT;

SCIENTIFIC MANAGEMENT; MANAGEMENT; CLASS STRUGGLE; LABOR PARTIES; REVOLUTION AND COUNTER-REVOLUTION.

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LABOR COLLEGES. See WORKERS' EDUCATION.

LABOR CONTRACT. Narrowly defined a labor contract is an agreement, express or implied, between an individual worker and an employer under which the former agrees to perform work



in return for compensation. Entry into the contract creates a relationship of master and servant or, in more modern terms, of employer and employee which entails mutual rights and obligations. These may be mentioned only in the broadest outlines or not at all in the individual contract itself but are defined by certain external controls, such as custom, judicial decision, legislation and collective agreement, and are assumed to form part of the contract. In so far as the individual labor contracts which prevail in a given legal-economic system thus largely conform to a common set of arrangements, it is possible to speak more broadly of "the" labor contract which characterizes the system.

Slavery, serfdom and forced labor are types of employment relation in the determination of which contract plays no part. In ancient society with its predominantly slave economy even such contracts for free labor as were made reflected the characteristic arrangements for the renting or maintenance of slave labor. In feudal society the typical employment relation was serfdom, under which the villein, or peasant, was born into a status from whose customarily determined obligations he could escape only under exceptional circumstances. Gradually there emerged a class of unattached agricultural and town laborers who were in a position to sell their services. Typically, however, the terms upon which they might do so were fixed by custom, guild regulation or law and not by contract. In England the Ordinance of Laborers of 1349 limited the wages that might be paid to agricultural laborers and workers in certain trades, compelled them to accept employment and in other ways determined their status. As early as 1381 in the Peasants' Revolt the demand was made that labor contracts should be free of legal restrictions. But it required four centuries of time and the dissolution of a subsequent widespread control over the employment of craftsmen and laborers of all sorts, established by the Statute of Artificers in 1562, for the peasants' demand to become an actuality. With the coming of the industrial revolution the system of free individual contract was established as the dominant type of employment relation.

Implicit in the concept of the labor contract is the idea that both parties are not only legally but actually free to bargain for terms and equally able to grant or withhold as they see fit the services or economic opportunities which they control. The resulting contract then represents the terms of the greatest mutual benefit, based

on the genuine consent of the two individuals. Such an ideal is measurably attained in the type of agreement whereby the services of a responsible manager or technician are procured by a business organization. Such a bargain frequently is concluded only after extended negotiations have led to the mutual acceptance of specified terms. A maximum of freely established elements thus is present in the ensuing employment.

In the great mass of labor contracts in the present economic system, however, although the parties are legally free to bargain for terms subject to limited control by law and collective agreement, economic necessity drives them together and along with other forces compels workers and less frequently employers to accept conditions which they have had little or no share in establishing. Market forces, custom, public opinion, collective bargaining and legislation play far more important roles than personal negotiation in dictating these contracts. By the time of the establishment of the free labor contract in England the legally liberated worker, who was forbidden to combine with his fellows, often had to face an employer with whose economic power he could not cope. The worker simply offered his labor, which must be sold both because it was highly perishable and because he had no other means of existence. The employer possessed capital that was more lasting and that increased his power of resistance, and he generally had an oversupply of workers from which to choose. This situation was later aggravated by the emergence of corporations and of large scale businesses as employers in all important industries except agriculture. Similar conditions accompanied the development of industrialism in the other occidental countries and have since spread into the Orient.

The history of the labor contract in the western world during the past century aside from the progress in abolishing slavery and forced labor is largely a story of efforts to introduce formal controls in the interest of the workers and of counterefforts to preserve individual bargaining as the only acknowledged determinant of employment relations. The simple contract of employment has increasingly been recognized as primarily a means of entry into a relationship whose characteristics have been determined previously and may be altered later, analogous in some ways to the "contract" of marriage. Hence improvement in the terms of the relationship has been sought partly through legislation, embodied in safety and health acts, laws regulating

the dismissal of workers, minimum wage and maximum hour laws, workmen's compensation and unemployment insurance legislation and other measures. At the same time certain employers have voluntarily improved the position of their employees not only by reducing hours and providing better working conditions but also by introducing company supported welfare work and pension schemes. More recently a few prominent employers have undertaken to guarantee a minimum amount of employment each year. Some concessions spreading through an industry or occupation have tended to establish certain customary rights of labor deriving from the labor contract, the violation of which, while not legally punishable, results in a loss of the goodwill of labor. All of these measures, however, have proceeded without regard to the shared control of the employment relation by employers and employees which the device of contract has been supposed to make possible. The effort to establish such control as a reality has proceeded largely through the movement for collective bargaining.

Collective bargaining has become possible through the removal of legal restrictions upon the right of workers and employers to organize. It has for its purpose the democratic establishment of the terms of employment relations. It seeks to accomplish this end by means of a process of bargaining between employers, acting singly or in groups, and organizations of workers, thus bringing about negotiations between two parties or sets of parties whose economic strength has some approximation to equality. Where this process succeeds it results in controlling agreements which take many forms ranging from informal understandings to written contracts enforceable at law. The collective agreement is not a contract of employment. Of itself it puts no one to work and fills no jobs. It is rather legislative in its effect upon employment, for it binds the parties to bring about the introduction of its terms into the labor contracts to which it applies. Thus, in so far as the employees' organizations are actually in their own hands, collective bargaining confers upon the workers in groups a share in controlling their employment relations which they could not enjoy individually. Moreover the evil effect of competition among employers in the matter of labor costs is diminished where a number are dealt with on the same basis.

The legal source of the strength which the workers are able to exert both in seeking to establish collective bargaining and in carrying it

forward is also the cause of their economic insecurity—the terminable nature of the typical labor contract of modern times. Since involuntary servitude has become contrary to public policy, even a contract of employment for a definite term cannot be specifically enforced. A damage suit for its breach would be of no use against an employee whose property, as is generally the case, is worth less than the legal exemption from execution. In the United States moreover the cumbersomeness and expense of legal proceedings have largely closed the door of the courts to workers. These reasons combined with the economic convenience of employers have caused labor contracts ordinarily to be made terminable at the will of either party without prior notice. Hence the simultaneous quitting of employment or shutting out of workers in furtherance of a collective negotiation is not of itself a breach of contract or other legal wrong, except where it violates the terms of a collective agreement. Neither is it an invasion of the rights of either party to a labor contract terminable at will for a third person, in furtherance of an otherwise legitimate purpose, to attempt to persuade the other party to withdraw from it. If, however, abuse can be shown in connection with any of these activities, an injunction—except as against the bare failure to offer to work or to employ—can be obtained in many states of the United States and in the federal courts. To aid in procuring this type of judicial remedy the so-called yellow dog, or individual non-union, contract has been used by numerous employers.

Preliminary organizing activity among workers having collective bargaining for its objective must be carried on by securing memberships in the labor union or at least promises to join from a considerable number of employees prior to the presentation of a demand upon the employer. The yellow dog contract furnishes a legal basis for checking this organizing activity without at the same time introducing the element of permanence into the employment relation. The essential element in such a contract is the promise on the part of the worker not to become a member of a union so long as he remains in the service of his employer. Despite the fact that the only consideration for the worker's promise is employment, still terminable at will, the courts have tended to uphold the validity of these contracts and to protect the property rights created by them. In *Hitchman Coal and Coke Co. v. Mitchell* [245 U. S. 229 (1917)] the United States Supreme Court held that efforts to per-

suaude workers who were bound by such contracts to promise to join a union without disclosing their intention to their employer or quitting their jobs could be enjoined in a suit filed by the employer. Thus the power of the judiciary to enjoin interference with non-union agreements is used to frustrate organizing activity. In 1930 it was estimated that well over a million workers in the United States were bound by such contracts. Only the New York Court of Appeals has indicated, without expressly holding, that such contracts will not be protected by injunctions [*Exchange Bakery and Restaurant, Inc., v. Rifkin*, 245 N. Y. 260 (1927); *Interborough Rapid Transit Co. v. Lavin*, 247 N. Y. 65 (1928)]. The courts of other states when faced by the issue have followed the ruling in the *Hitchman* case. As a result of considerable agitation by organized labor to nullify the force of that decision Congress in 1932 passed the Norris-La Guardia anti-injunction act, which declared yellow dog contracts contrary to public policy and unenforceable by injunction or otherwise in the federal courts. The extent to which state legislatures and courts will follow this federal action remains to be seen.

The settlement of terms and conditions of employment by more or less impartial agencies of adjustment is variously provided for in modern legal-economic systems. Conciliation and arbitration may be established by law or collective agreement and may be made to apply to collective disputes or to differences arising out of individual labor contracts or to both. Where an agency of adjustment is representative of workers and employers it involves an extension of shared control similar to that which is effected by collective bargaining. Within particular establishments moreover the formation of shop rules together with control over a variety of other matters has been entrusted by law, collective agreement or voluntary concession by employers to works councils established for the purpose. In a few instances substantial participation in ownership and management has been conferred upon employees and the labor contract has thus been assimilated to the organic arrangement governing the business enterprise.

The unrelieved individual labor contract terminable at will characterizes what appears to be relatively a brief phase in the history of the employment relation. Prior to the industrial revolution employment contracts in England, in the absence of stipulations to the contrary, were presumed to run for a year. Only gradually did it

come to be established that the employer might dispense with this arrangement by rule or that a custom might authorize summary discharge. In virtually all countries the basic law of the labor contract laid down in judicial decisions or code provisions arrived at substantially the same result; but in Italy, France, Germany and other countries the movement toward a dismissal wage or notice of discharge, required either by legislation or collective agreement, has since made considerable headway. This development coupled with unemployment insurance legislation and legal provisions which make unpaid wages a preferred charge in insolvency proceedings defines the extent of the worker's claim upon the business enterprise to which he contributes, over and above his current compensation. It thus performs a function similar to the entrepreneur's or stockholder's right to the going concern value and to the bondholder's right to have the assets applied if need be to the satisfaction of his claim. A mutual obligation to give prior notice of the termination of a contract of employment does not necessarily apply to a strike or lockout, which may be considered in the same light as a layoff or shutdown, during which the employment relation may be taken to continue.

Control over employment on a democratic basis, extending even to agriculture, has proceeded farther in Germany since 1918 than in any other major country. Collective bargaining between employers and workers who are extensively organized has been encouraged by legally established conciliation and arbitration machinery and supported by well defined legal sanctions. The ultimate responsibility of the democratic state for the welfare of workers and for the steady functioning of trade and industry is recognized through a discretionary power to impose agreements in settlement of collective disputes. A statutory system of works councils fosters joint control over employment within industrial and commercial establishments. In Russia a structurally similar system serves the Soviet dictatorship both because of state ownership of the important enterprises and because of state control over the trade unions. In Italy the dictatorship makes use of a rigidly governed syndicalist organization and machinery of collective bargaining to maintain a like control over employment. In the United States individualism in the labor contract still dominates, partly because of a traditional adherence to "freedom of contract" as against both public and private control and partly because of limitations upon public

control which the courts have held to be embodied in constitutional provisions. The general tendency, however, which is being reinforced by international conventions, seems to foreshadow greater security and participation in the benefits of machine industry for the workers, whose present insecurity and inadequate compensation are an outstanding weakness of the legal-economic structure.

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See: LABOR; CONTRACT; FREEDOM OF CONTRACT; EQUALITY; BARGAINING POWER; COLLECTIVE BARGAINING; TRADE AGREEMENTS; LABOR LEGISLATION AND LAW; LABOR INJUNCTION; COURTS, INDUSTRIAL; ENTICEMENT OF EMPLOYEES; LABORERS, STATUTES OF; CONTRACT LABOR.

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**LABOR DISPUTES.** The terms "labor dispute" and "industrial dispute" are frequently used or interpreted as having exclusive reference to a concerted cessation of work. Thus the United States Bureau of Labor Statistics, after maintaining for some years a separate classi-

cation for strikes and lockouts, now combines the data on these mass activities under the heading "industrial disputes." The term may, however, be used in a broader sense to include all disagreements and all evidences of disagreement between employer and employees, whether or not organized activity is implied and whether or not the dispute culminates in a strike or lockout. It is in this broader sense that the term is used here.

In its most common meaning a labor dispute implies a definite employer-employee relation which still exists, although in more or less strained form, or which has only recently been broken. It may involve an employer and some or all of his employees, a group of employers in the same or related trades and their employees or, in rare cases such as that of the general strike in England in 1926, all employers and their employees over a wide economic or geographical area regardless of industrial boundaries. Thus defined, it is essentially limited in its application to the period in economic history during which the employer-employee relationship has existed, the period of the free laborer. Yet it is related historically to the unrest and discontent of the unfree workers of earlier periods—the slaves of antiquity and of the southern states in the United States, the peasants of feudal Europe and the peons of Latin America. To these unfree groups individual escape—more difficult for the slave than for the serf, especially after the rise of the towns—restriction of output or sabotage (*q.v.*) offered the only peaceable means of expressing discontent with their status in general or their treatment in particular. Group action by these unfree workers almost necessarily involved violent uprisings with considerable bloodshed. Generally such uprisings were mercilessly put down; yet occasionally they effected permanent political freedom for the workers, as in Haiti, or forced some mitigation of the former status.

Restriction of output and sabotage are avenues for the individual registering of dissatisfaction by the free worker also. Or, like the Luddite rioters, he may take his vengeance upon the machines which seem to threaten his status or his job. Another indication of unrest is found in labor turnover, resulting from the voluntary quitting of jobs or from insubordination leading to discharge.

The limitations upon the effectiveness of individual action led free labor early to seek the benefits of organization. With the creation

under the guild system of a group of journeymen increasingly less likely to rise into the ranks of the masters, there developed, sometimes within the guilds themselves but often as independent organizations, journeymen's societies established primarily to defend the position of these workers against the control of the guilds. By methods suggesting those of the modern trade union these societies tried to limit the number of apprentices, improve wages and shorten the working week. With the decay of the guild system and the coming of industrialism the journeymen's societies lost their power. There ensued a period of sporadic strikes by the new factory workers, often sponsored by organizations which sprang up just to see the dispute through and then disbanded. Gradually out of these spontaneous evidences of common discontent there developed permanent organizations ready to act as soon as a dispute arose. A permanent unionism became the principal agent of the workers in labor disputes. Even in the twentieth century, however, sporadic strikes occur by workers who have hitherto been unorganized.

A further indication of the existence of unrest and dissatisfaction among wage earners appears in their activity in the political field. The labor dispute arises primarily out of economic conditions. But these in turn are profoundly affected by the relation of government to industry, and the ability of the workers' organizations to function in an economic conflict depends in large part upon their legal status. The essentially economic labor dispute thus tends to assume a political character. To secure proper consideration of its rights labor demanded the right of suffrage and having obtained it proceeded to support either the candidates or parties which seemed to offer it the most or organized parties of its own. The former procedure is still followed in the United States, as it was in England in the latter decades of the nineteenth century; at present British labor has its own political party, and in Europe generally labor organizations are affiliated with political parties which represent their own interests.

One of the earliest concessions which the workers sought through political action was the legal right to organize and carry on their activities in the economic field as a collective unit rather than as an agglomeration of individuals. This right was not easily obtained. In most industrial countries trade unionism was at first

illegal. England took the first step toward legalizing collective labor action in 1824. The same end was achieved in the United States through a series of court decisions and in France and Germany through legislation. The attainment of the right to organize was followed in England by a century long struggle, not yet ended, for the right to function without interference by legislation or by judicial decisions. The same struggle is evidenced in the United States in the attempts of the unions to restrict the use of the injunction and the "yellow dog" contract. In varying degrees the political demands of labor in different countries have come to include attempts to secure through legislative action improvements in the status of labor which could be secured only with great difficulty or not at all through economic action. The growing body of labor legislation represents the fruit of this activity and constitutes an important factor in the elimination of certain causes of labor unrest.

Dissatisfaction over wages seems to be the most important immediate cause of labor disputes. In slightly more than half of the strikes reported to the United States Bureau of Labor Statistics, in two periods together covering forty-one years, some aspect of the wage question has been involved; the wage question has motivated more than twice as many disputes as any other cause. In other countries for which records are available the matter of wages occupies a position of similar importance. This is in part a reflection of the whole area of industrial hazard. Concentration on the effort to secure higher wages undoubtedly has its origin not merely in dissatisfaction over the wage rate itself but also in a consciousness of the danger of work interruptions of every sort, which constitute interruptions in earning power. This fear of loss of stability in earning power is emphasized also in the establishment in many labor agreements of seniority rules, for the protection of workers longest in service. Other well recognized causes of disputes are such matters as the length of the working day or week and other factors generally described as "working conditions." These include shop conditions affecting comfort, safety and health.

But no concise categories can include all the causes of strikes. The British Ministry of Labour before the World War reported strikes for such reasons as the refusal of an employer to let miners attend the funeral of a fellow worker killed at work, the unwillingness of employees

to work with certain individuals involved in a family quarrel or with foreigners and a demand for the suspension of a policeman who had arrested a workman for using obscene language. Often the more significant causes of unrest do not appear among the listed causes of strikes in the official reports. A denial of what is believed to be "justice," extremely discourteous treatment by persons in authority or an invasion of "rights" may lead to strikes of unusual duration and bitterness. In the United States some of the most violent strikes have followed refusal by an employer to confer with a committee of workers, refusal to answer communications from employees or their representatives, discharge of members of workers' committees asking for an adjustment of grievances and discharge of persons joining unions.

An underlying cause of industrial conflict is the more or less active consciousness of lack of status on the part of wage earners generally. It is this lack of status which makes for economic insecurity and at the same time accentuates the sense of injustice arising out of objectionable conditions of any sort. The achievement of a condition of freedom, while securing to the worker individual rights of incalculable importance, failed to provide him with the right of access to the means of livelihood. The most important new individual weapon was the right to refuse to work under the terms offered. Among organized workers quitting was and is the common individual response to dissatisfaction with working conditions. But this "freedom to quit" is often entirely theoretical. It depends primarily upon the ability to obtain a new job. In periods of great unemployment or in sections which are devoted to one industry and in which the employers maintain a blacklist, the right to quit is frequently tantamount to the right to starve. Where a particular type of labor is employed by one firm only, quitting entails the loss of all the advantages of acquired skill and training.

The employer may deal with industrial unrest by ignoring its existence or repressing its manifestations by disciplinary methods, including dismissal and the use of the blacklist. This procedure, although not generally approved by progressively minded employers, may have the appearance of success when labor is plentiful or when artificial barriers to labor mobility exist, as in isolated centers or in one-industry towns. At almost the opposite extreme is the method of collective bargaining, having as its purpose

an adjustment which will be acceptable to both employer and employee.

Between these two methods is that of anticipating dissatisfaction by considering the needs of the workers and attempting in varying degrees to meet them. When offered as a form of philanthropy, as in certain types of industrial welfare work, or as a thinly veiled "sop to Cerberus," such methods sometimes create rather than allay dissatisfaction. Intelligently managed personnel departments, on the other hand, organized on a frankly business basis and devoid of pseudo-philanthropic motives may do much to lessen unrest and to create an atmosphere of understanding and good will.

Company unions (*q.v.*) are another method of dealing with unrest which is open to the employer. These unions generally operate in connection with plans providing for petitions and joint committees to hear complaints but are not so organized as to encourage more vigorous action.

Similar alternatives are open to the state. It may endeavor through protective and other legislation to eliminate abuses and thus to raise the level at which disputes arise. Having done this, it may interfere with the dispute itself by forbidding it, placing limitations upon the methods of conducting it or setting up agencies to promote a peaceable and practical settlement.

Definite limitations, either of custom or of legislation, upon the right to carry labor disputes to the point of striking occur most frequently in the case of public employees and employees of public utilities. Because of legal restrictions public employees resort to political influence or to petition for redress of grievances. Although workers in the civil service are organized in many fields in many countries, strikes of these employees are so rare as to be negligible. In the field of public utilities there are few strikes outside of transportation. This undoubtedly is due in part to the relatively small number of employees engaged at each plant unit, in part to the fact that much of the work is unskilled and substitutes could easily be found, and in part to public opinion, which would generally be hostile to any interruption of service and which if put to the test might favor restrictive legislation. The greater number of workers, many of whom are highly skilled, has led to the growth of trade unionism in the transportation service, and here action in labor disputes has been more aggressive.

The legal status of strikes and methods of dealing with them vary in the different countries. Machinery of some sort for dealing with industrial controversies has been set up in most of the states of the United States. The most common device is a state bureau of mediation and conciliation with no compulsory powers of any sort. In a few states the bureau or some similar agency has power to make an investigation of a dispute and compel witnesses to testify under oath. Only one state, Colorado, attempts to forbid the carrying on of a strike where neither violence nor other illegal methods are involved. In this state no strike or lockout may legally take place while the Industrial Commission is investigating the dispute. This law is an adaptation of a Canadian law applying to public utilities alone.

The United States Department of Labor maintains a conciliation service which attempts to mediate in industrial disputes. The federal law relating to disputes on interstate railroads provides for a board of mediation which may offer its services or suggest arbitration. If its offers are rejected and a strike seems imminent the board must notify the president, who may create an agency to investigate and report. If such an agency is created no strike may legally take place while it is carrying on its investigation or for thirty days after it has reported to the president.

In Great Britain and France as in the United States official machinery exists for the promotion of peaceful settlement of disputes. In Great Britain courts of inquiry may be set up with power to take testimony and make the findings public. In neither country is arbitration compulsory nor are there other legal barriers to peacefully conducted strikes. Germany resorts to compulsory arbitration under certain limited circumstances and it is the established practise in Australia and New Zealand. In Italy all strikes and lockouts are forbidden and in Soviet Russia, although strikes are theoretically legal under certain circumstances, the combined effect of restrictive legislation and the domination of the unions by members of the Communist party has made strikes practically non-existent.

It is during the preliminary stage of industrial disputes while negotiations are pending that governments or other third parties attempt to facilitate settlement by offering their services. Frequently a trade agreement calls for the establishment of an arbitration board whose findings

the groups have agreed in advance to accept. Occasionally two groups without previous arrangement agree to arbitration by the government or by some third party.

Once a dispute has reached the state of an actual strike or lockout, a definite break occurs in the continuity of employment and the two groups assume a somewhat different relation toward each other. The same agencies may still offer themselves or be made available for the settlement of the controversy after it has reached the strike or lockout stage, but the problem has become more difficult by virtue of this changed relation. A new technique—a war technique—is now called into play and the problem of the government becomes one of laying down certain rules, seeing that they are enforced, protecting third parties and attempting as soon as possible to secure a settlement.

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*See:* STRIKES AND LOCKOUTS; BOYCOTT; SABOTAGE; BLACKLIST, LABOR; DETECTIVE AGENCIES, PRIVATE; LABOR INJUNCTION; LABOR LEGISLATION AND LAW; LABOR MOVEMENT; JOURNEMEN'S SOCIETIES; TRADE UNIONS; EMPLOYERS' ASSOCIATIONS; LABOR PARTIES; ARBITRATION, INDUSTRIAL; COURTS, INDUSTRIAL; LABOR-CAPITAL COOPERATION; INDUSTRIAL RELATIONS.

*Consult:* Fitch, John A., *Causes of Industrial Unrest* (New York 1924); Schwittau, G., *Die Formen des wirtschaftlichen Kampfes* (Berlin 1912); Florence, P. S., *Economics of Fatigue and Unrest* (London 1924); MacIver, R. M., *Labor in the Changing World* (New York 1919), especially chs. II-III; Watkins, G. S., *Labor Problems and Labor Administration in the United States during the World War*, University of Illinois, Studies in the Social Sciences, vol. VIII, nos. 3-4 (Urbana 1919), especially ch. IV; Parker, Carleton H., *The Casual Laborer and Other Essays* (New York 1920); Bonnett, C. E., *Employers Associations in the United States* (New York 1922); Howard, Sidney, and Dunn, Robert, *The Labor Spy* (New York 1924); Adamic, Louis, *Dynamite* (New York 1931); Mathewson, Stanley B., *Restriction of Output among Unorganized Workers* (New York 1931); Jones, G. M., *The Control of Strikes in American Trade Unions*, Johns Hopkins University, Studies in Historical and Political Science, vol. XXXIV, no. 3 (Baltimore 1916); Ko, T. T., *Governmental Methods of Adjusting Labor Disputes*, Columbia University, Studies in History, Economics and Public Law, no. 271 (New York 1926); Witte, E. E., *The Government in Labor Disputes* (New York 1932); Berman, F., *Labor Disputes and the President of the United States*, Columbia University, Studies in History, Economics and Public Law, no. 249 (New York 1924); Askwith, George R., *Industrial Problems and Disputes* (London 1920); Soule, George, *Wage Arbitration, Selected Cases, 1920-1924* (New York 1928); Saposs, David J., *Labor Movement in Post-war France*, Columbia University, Social and Economic Studies of Post-war France, vol. IV (New York 1931); Haider, Carmen, *Capital and Labor under*

*Fascism*, Columbia University, Studies in History, Economics and Public Law, no. 318 (New York 1930), especially ch. viii; Hoover, Calvin B., *Economic Life of Soviet Russia* (New York 1931) ch. x; International Labour Office, "The Trade Union Movement in Soviet Russia," *Studies and Reports*, ser. A, no. 26 (Geneva 1927), especially p. 167-81. See also bibliographies on Strikes and Lockouts; Arbitration, Industrial; Courts, Industrial; Personnel Administration.

LABOR EXCHANGE BANKS is a composite term which for the purposes of this discussion comprises labor exchanges in the older sense, exchange banks and similar experiments and plans. These nineteenth and twentieth century projects were designed to secure a fair compensation for the producer through a currency reform sometimes linked to a reorganization of the mechanism of commodity exchange. The common assumption basic to these plans is that they reject the system of metallic money and the credit structure built upon it as an institution which puts monopolistic power into the hands of the owner of liquid wealth and enables him to exploit the producer who must sell his labor incorporated in commodities. Unlike socialists, who decry the exploitation of the wage-worker by the private owner of the means of production, the advocates of these plans find the root of the evil in the sphere of circulation and credit; their enemy is not the industrialist but the merchant and the banker, and in this sense their outlook is that of the handicraftsman or small manufacturer rather than that of the wage-worker. But they go much further than those who proclaim the parasitism of the middleman; they condemn the existing currency system, which enables him to monopolize money and credit funds rather than the middleman's function as such. The earlier of these plans emphasized the distortion of the true value relationships between commodities caused by the fact that the possessor of money who tries to buy cheap and to sell dear intervenes between the producer and the consumer; they proposed accordingly a more or less direct exchange of commodities against one another with a currency issue designed merely to facilitate such exchange. The later schemes, on the other hand, attacked the charging of interest for loans as the most direct manifestation of exploitation by money and credit power; their primary aim therefore was to bring about such a reconstitution of the currency and credit mechanism as would deprive the moneyed man and the banker of their monopolistic status.

The most important of the early experiments was the National Equitable Labour Exchange established under Robert Owen's guidance in London in September, 1832. The principles underlying it have already been stated in a fairly developed form in Owen's *Report to the County of Lanark of a Plan for Relieving Public Distress* (Glasgow 1821), presented in 1820 when the acute post-war depression in England was being aggravated by measures taken to restore the gold standard. Owen argued that the prevailing poverty could not be due to lack of wealth because man's labor had long been sufficient to maintain him and recent inventions had multiplied its productivity manifold. The trouble was due to poor circulation of wealth caused by the use of an artificial standard of value—gold and silver—which "altered the *intrinsic* values of all things into *artificial* values" (p. 5). "The natural standard of value is in principle human labour, or the combined manual and mental powers of men called into action" (p. 6), for "that which can create new wealth is of course worth the wealth which it creates" (p. 19). One of the measures required to "let prosperity loose on the country" was an arrangement by which "the *natural* standard of value shall become the *practical* standard of value" (p. 20). This standard obtained under barter when commodities were exchanged against one another according to the amount of labor they contained. But "barter was succeeded by commerce the principle of which is to produce or procure every article at the *lowest*, and to obtain for it in exchange the *highest* amount of labour. To effect this an artificial standard of value was necessary" (p. 20). Like barter commerce was adapted to a certain stage of development—it promoted inventiveness but also encouraged selfishness and greed. With the increase in wealth resulting from inventions metals have become inadequate to represent all wealth; nor can paper money like the Bank of England note be acceptable, because it gives monopoly of the standard of value to a private trading company. Now "the strong hand of necessity" forces man toward a new system which combines the advantages of barter and commerce. Its establishment is conditioned upon ascertaining "the net value of the whole labour contained in any article of value, the material contained in or consumed by the manufacture of the article forming a part of the whole labour" (p. 20) and upon the issue of a paper representative of the value of labor in order to facilitate exchanges. Under this system



"human labour . . . would acquire its natural or intrinsic value, which would increase as science advanced. . . . The demand for human labour would be no longer subject to caprice, nor would the support of human life be made, as at present, a perpetually varying article of commerce, and the working classes made the slaves of an artificial system of wages more cruel in its effects than any slavery ever practised by society" (p. 7). Only under the new system would the producer be certain to receive "a fair and fixed proportion" of all the wealth he creates, to which he is justly entitled and which the best interests of every community require that he should have.

The principles propounded in the *Report* influenced producers' cooperative societies established in the 1820's, which early in their history decided upon the establishment of central exchanges or bazaars to facilitate intercooperative trade at cost prices. An exchange bazaar on "an equitable time valuation basis" was actually founded in April, 1832, by the British Association for Promoting Cooperative Knowledge (the central body of the cooperative movement at the time) before Owen decided to promulgate a full scheme for a labor exchange with draft labor notes and rules. According to this plan the exchange was to receive goods on deposit and to appraise them in terms of hours of labor. The appraisal was to be based largely upon the depositor's own statement, and the cost of raw material entering into the commodity was to be turned into labor time at the rate of sixpence for an hour of labor. A service charge was to be made of a halfpenny per shilling for members and double that for outsiders. The labor notes paid the depositor could then be used by him to purchase goods delivered by other depositors and similarly appraised. Thus, Owen concluded, if a sufficient number of people were to patronize the institution, producers could then exchange their goods without the use of money and the intervention of middlemen.

At the beginning the National Equitable Labour Exchange attracted the interest of the public and met with considerable success. In the first four months goods to the amount of 445,501 labor hours were deposited and goods amounting to 376,166 labor hours were exchanged. No less than 250 stores announced that they would accept the labor notes as the equivalent of cash. It was asserted that a great moral effect had been produced upon the non-laboring classes, who saw the basis of their existence endangered and resolved to seek productive

employment. In December, 1832, the exchange opened a branch in south London and in the following year one in Birmingham. A similar establishment in Liverpool soon followed.

The success of the exchange was, however, short lived. After a while the number of commodities deposited with it diminished and exchanges decreased even faster, the holders of its notes complaining that they could not find the goods which they needed. The exchange accepted goods regardless of the demand for them; its customers took advantage of this to unload goods otherwise unsalable, particularly commodities which required a great deal of labor and a comparatively small use of raw materials. Another fatal practise of the exchange was the setting of equal value upon different kinds of labor; some of the goods in its stocks were therefore priced very low and were eagerly taken by shopkeepers who came into possession of labor notes. The exchange was compelled after a time to make use of money. To relieve the stringent shortage of raw materials in its stocks it solicited subscriptions of money in order to purchase materials for distribution among suitable members; the goods produced according to this plan were to be sold partly for cash and partly for labor notes. A similar arrangement was made with bakeshops to make bread available to the customers of the exchange. These measures, which constituted a radical departure from the principles of the exchange, forecast its early end. The labor note lost 25 percent of its value in the open market and at the end of May, 1834, it was announced that the exchange was to be dissolved.

Owen's experiment was in a sense anticipated by an American, Josiah Warren, who was a member of the New Harmony community in 1825-26. Disappointed in collectivism Warren became an extreme individualist violently opposed to monopolies and to the state created to maintain and perpetuate them. He believed that under true competition price will be equal to cost, while in the present order the upper limit of price is value. Under the value principle prices are raised in consequence of increased want and are lowered with its decrease, and that man is regarded as the most successful who can create the most want in the community; this, according to Warren, is no better than "civilized cannibalism." Under the cost principle price fluctuations, business insecurity, maladaptation of supply to demand and every species of speculation will disappear. Moreover, since the cost

of a commodity is equal to the exertion entailed in its production, goods which do not involve exertion, such as natural resources, will be free. Similarly interest will virtually disappear, as "the equitable compensation for the loan of money is the cost of labor in lending it and receiving it back" (*Equitable Commerce*, 3rd ed. by S. P. Andrews, New York 1852, p. 46). Money shares all the disadvantages of the value system: it is not a proper medium of exchange because its relation to property is indefinite. "Money represents robbery, banking, gambling, swindling, counterfeiting, etc., as much as it represents property. . . . We want a circulating medium that is a definite representative of a definite quantity of property, and nothing but a representative. . . . A note given by each individual for his own labor, estimated by its cost, is perfectly legitimate and competent for all the purposes of a circulating medium. It is based upon the bone and muscle, the manual forces, the talents and resources, the property and property-producing powers of the *whole people*—the soundest of all foundations, and is a circulating medium of the only kind ever to have been issued" (p. 67-68).

Warren's practise was more moderate than his theory. In 1827 he opened in Cincinnati an "equity store" dealing in general merchandise. It sold goods at cost prices, but a charge (4 percent according to some sources and 5 percent according to others) was added to cover general expenses and the time of the storekeeper consumed in waiting upon the customer was paid by the latter in labor notes calling for an equal amount of his own labor; for this reason Warren's establishment became known as the "time store." In addition the store acquired goods for sale on a labor for labor basis, but the labor value of such goods was regulated by the expert opinion in the respective trade and only goods for which there was an assured demand were bought; a list of staple articles with labor values attaching to them was available for ready reference. Apparently not all kinds of labor were given equal value. Warren maintained that "we must discriminate between different kinds of labor, some being more disagreeable, more repugnant, requiring a more costly draft upon our ease or health than others. The idea of cost extends to and embraces this difference" (p. 42-43). For the sake of convenience some labor notes equated labor time to corn at the rate of thirty pounds of grain per hour of the farmer's labor.

The time store was in effect underselling other establishments in Cincinnati and was soon doing a thriving business despite its inconvenient location. But having proved to his satisfaction the workability of the cost principle Warren decided in 1829 to discontinue the store in order to be free for more radical and significant social experimentation. Many of the cooperative settlements which he later founded had equity stores attached to them, and from 1842 to 1844 a similar establishment operated under his guidance in New Harmony. In the meantime some followers of Warren organized in Philadelphia an association of small producers eager for independent marketing facilities; it opened in 1828 a "producers exchange of labour for labour store," which sold goods both for money and for labor, depending upon the manner of their purchase by the store. Two similar stores were established in Philadelphia shortly after the first was successfully launched; later the original labor exchange did business also on a commission basis. It is likewise on record that in 1847 an equity store was opened near Cincinnati by a follower of Warren.

The provision of marketing facilities for the handicraftsmen and small manufacturers who wished to remain independent of capitalist merchants was the need of the hour not only in the United States but also in France. Only thus can be explained the successful operation of a *banque d'échange* in Marseille from 1829 to 1845. Comparatively little is known of this institution established by the brothers Mazel, one of whom, Benjamin Mazel, is known to have been a lawyer influenced by Fourierist and Saint-Simonian ideas and professing a belief that *l'épargne tue, l'échange vivifie*. Although in his *Code social* (Marseille 1843) Mazel proposed that metallic currency be replaced by labor money based on a definite valuation of work performed by each of the seven different classes into which all the producers were to be divided, the bank did not provide for valuation on a labor basis but accepted the prevailing market price as the standard. It allowed its members to deliver goods of their own production, paying for them in exchange notes stated in francs; the notes were redeemable in goods which could be selected and priced in members' shops. A service charge of 8 percent enabled the bank to maintain the necessary quarters and to pay a 5 percent return on the invested capital. Its initial success is illustrated by the fact that about 50,000 laboring families were enlisted

as members and that the turnover for the first six months amounted to 2,400,000 francs. Several million exchange operations in many cities of France, Belgium and Switzerland were effected under the guidance of the bank before it collapsed. The reason for its failure is significant—disputes broke out among members as to the valuation put upon their products and a minority refused to honor the bank's notes. Mazel went to law to force compliance with the agreement. It was decided that a notary public in Lyons should be appointed to appraise the goods of recalcitrant members; he was authorized to compel delivery of goods against the bank's notes and to collect the additional costs which such a procedure involved. Mazel hoped for better luck with the more enlightened artisans of Paris, but the "société générale d'échange" which he planned to establish there in 1848 did not materialize.

The scarcity of money and the lack of equilibrium between production and consumption were the considerations which according to his own admission impelled Bonnard to establish an exchange bank in Marseille in 1849. Bonnard's institution attempted to bring about direct exchanges. Its exchange notes unlike those of Mazel did not represent a general claim against the labor of its members; they merely entitled their holder to certain quantities of specific commodities at a definite valuation. The bank functioned therefore as a clearing house for goods on a commission basis with the administration operating as an expert appraiser. Its success, depending essentially upon the skill with which the appraising was done, was very marked in the early years of its existence. In the first year, for example, it transacted business amounting to 434,624 francs on a capital of 7825 francs and in the following two years it increased both its capital and its business. Another banking practise introduced by Bonnard's institution was the granting of credit in its own exchange notes for the purchase of raw materials, obligating the debtor to surrender the finished product to the bank at a definite valuation. The bank was thus able to finance production from the initial to the last stage in striking contrast to the practise prevalent at the time—the financing by the wholesale distributor from the stage of the finished product downward; it was this aspect of Bonnard's operations which attracted favorable attention of respectable economic opinion, such as represented by Courcelle-Seneuil. In 1853, when Bonnard

reorganized an ordinary exchange bank in Paris into a *crédit central*, he introduced a similar practise there; the turnover of this institution in 1854–55 was reported to be about 45,000,000 francs. The principle was soon adopted by some German credit institutions notably in Magdeburg and Berlin in 1856. In the last years of its existence the management of the Marseille bank apparently neglected the rules of ordinary business prudence; the bank collapsed in 1858 after incurring a loss of 308,000 francs. A fairly large number of banks similar to those of Mazel or Bonnard were established in various cities of France but so far as is known they did not last long.

Although they were never carried out Proudhon's plans for an exchange bank are of greater interest than those of his French contemporaries: they formed an integral part of his general scheme of social reconstruction and had numerous advocates both in his own day and in later periods. Maintaining that the principal cause of poverty and distress is not the anarchy of production but the lack of centralized organization in the field of circulation Proudhon regarded money and interest as the two chief evils which distort true labor values and bring about crises. Both of these could be abolished by a system of mutual credit which would place the exchange of goods and banking on an entirely new basis. The first scheme which he proposed, that of a bank of exchange, was intended to transform the bill of exchange into an instrument of general circulation. The Bank of France, which was to become the only credit institution in the country, was to issue irredeemable *bons d'échange*, the sole circulating medium in France, to be delivered against discounted commercial paper and in the form of loans based on merchandise collateral. Centralization of banking and abolition of redeemability in specie would adjust circulation to the needs of production and dispense with the privilege of moneyed wealth; interest as such would be eliminated and banking charges reduced to the cost of conducting banking operations. Proudhon's second scheme called for the establishment of a people's bank, a voluntary cooperative institution which would grant free credit on a mutual basis and facilitate exchanges through the issue of *bons de circulation* to be delivered to members against goods deposited for sale with the bank. In the valuation of such goods profits were to be renounced and the depositions of members as to cost checked by the bank's appraisers. The

people's bank was established in 1849; 36,000 francs of capital in five-franc shares had been subscribed and a considerable membership both of individuals and of associations enlisted, but the bank had not yet begun operations when Proudhon's imprisonment on a political charge for a term of three years sounded the death knell of the institution.

Proudhon's idea of mutual and gratuitous credit, which he expounded on a number of occasions independently of his concrete proposals, took vigorous hold upon the imagination of his contemporaries. It was reflected, for instance, in Émile de Girardin's scheme of a *banque rationnelle* to guarantee private credit. This service was to be rendered at a much smaller cost to those who agreed to accept the bank's notes in lieu of legal tender, with the obvious intention of setting up a mutual credit scheme alongside the ordinary credit mechanism. The idea of mutual credit proper was popularized in the United States by William B. Greene, a Unitarian preacher of Massachusetts, who published in 1849 a series of articles (reprinted as *Mutual Banking*, West Brookfield, Mass. 1850, and several times thereafter) which attempted to show how the system could be adapted to American conditions. About the same time Charles A. Dana manifested his enthusiasm for the people's bank in a series of articles written for the *New York Tribune* and reprinted during the 1896 presidential campaign by Benjamin R. Tucker (*Proudhon and His "Bank of the People,"* New York 1896), who for many years had advocated mutual banking in the columns of *Liberty* (17 vols., 1881-1908). Mutualism has its exponents to this day both in the United States and elsewhere.

Like Proudhon, Edward Kellogg, a New York merchant who lost his fortune in the panic of 1837, believed that the root of social evil lies in the charging of interest above the actual cost of lending. He looked upon money as a creature of the law and identified the value of money as a medium of exchange with its value as a means of accumulation, i.e. the interest rate. Believing that high interest allows a few large capitalists not only to despoil the producer of his fair share of the product but also to exploit the small capitalist he regarded the prevalence of high interest rates as evidence of capitalistic control of the government. The "true monetary system" which he proposed (*Labor and Other Capital*, New York 1849) would reduce interest to its proper level and provide for a volume of money corre-

sponding to people's needs. Instead of mutual banking he advocated the establishment of a government loan office with branches throughout the country to issue money as loans against mortgages on land; the interest charged, about 1.1 percent, would correspond to the cost of operation and regulate charges in private credit transactions. The quantity of new currency in circulation was to be made flexible by the issue of government bonds yielding about 1 percent which would be interchangeable with the currency. Kellogg hoped that the new system would practically abolish interest, prevent unequal accumulation, dispense with non-productive capital—capital dissociated from the productive effort of its owner—and establish a standard of distribution which would almost conform to the natural rights of man. After his death Kellogg's critique of the existing order and his reform proposal became the economic gospel of the Greenback movement, at least in its early stage when it demanded cheap credit rather than cheap money.

Proudhon's ideas of centralization of exchange and abolition of money influenced Wilhelm Weitling, who in 1851 was the leader of German labor groups in New York City. Weitling advocated the establishment of an exchange which should issue labor money against the deposit of useful articles or the performance of useful work, this money to constitute the sole circulating medium. The labor valuation of the goods was to be determined by a commission collaborating with the associations of producers in each trade, which were to fix wages and guarantee quality. Weitling expected that his plan would not only dispense with middlemen and reduce the cost of exchanging goods but would also stabilize production and abolish unemployment.

The difficulty which none of the early advocates of labor money really attempted to meet was the establishment of value relationships between different kinds of labor. It was faced directly by Karl Rodbertus (in "Der Normal-Arbeitstag" published in 1871, reprinted in his *Schriften*, ed. by Moritz Wirth, 4 vols., Berlin 1899, vol. iv, p. 337-59), who regarded the preservation for the workmen of the benefits resulting from the increasing productivity of labor as a means of stabilizing the social order. He proposed to arrive at a standard unit of labor by establishing for each industry a normal working day, the length of which was to depend upon the physical and nervous exertion required for the particular type of work. The output

of a workman of average skill and application during a normal working day in every industry was to be considered of equal value and to serve as the standard unit of new labor money to be issued by the state and advanced to the employers. In order to secure the general circulation of labor money, which was not intended entirely to displace metallic currency, the output of industry operating under this arrangement was to be assembled in government warehouses for sale against the new money. The advantages of this scheme were the definite determination of wages, regulated by the ratio of actual performance to the standard daily output, and the easy valuation of all commodities. While labor was admittedly the sole producer of wealth it was to get only three tenths of its product; equal shares were to be left for the owners of capital and land, while the remaining one tenth was to be appropriated by the state to cover government expenses. While the standard daily output, functioning as the value unit, was to be revised from time to time in order to take account of the increasing productivity of labor caused by new inventions, labor's share was to remain constant; wages were thus to be protected from the influences forcing them down to the subsistence level.

Attacks upon the iniquities of the monetary and banking system and advocacy of labor money or gratuitous credit were submerged after the triumph of industrial capitalism in the second half of the nineteenth century by the rise of socialism, which became the most important ideology of the oppressed classes. Socialism, which looked upon the struggle between the industrial proletariat and the employers as the major social conflict, had as its goal the revolutionary appropriation to society of the means of production as the only feasible comprehensive solution of the social problem. In its nineteenth century variants it paid little attention to currency and banking as such, tending to view them merely as one of the instrumentalities of the existing order which was as essential to the maintenance of the power of the ruling class as to the normal functioning of the capitalist economy. During the years 1870 to 1914 fierce criticism of the established credit and marketing mechanisms was voiced by small agricultural producers and the surviving handicraft groups, both of which were hampered by lack of capital and by the predatory features of the marketing organization. Their resentment, however, was canalized into bimetallic propaganda, the ad-

vocacy of agrarian protectionism and the fostering, often with government aid, of a great variety of cooperative institutions. Occasionally demands were made for the issue of unlimited quantities of paper money against agricultural or other commodities in storage, but these merely reflected the momentarily depressed condition of some basic industry and were not taken seriously. More socially significant and intellectually substantial plans for currency reform as a means of social reconstruction matured only after the World War, when confidence in orthodox socialism waned and the pre-war mechanism of money and credit showed signs of collapse.

Perhaps the most interesting of these proposals is that advanced by Major C. H. Douglas, a Scottish engineer. Douglas contends that at present the economic organism is dominated by bankers, who have succeeded in usurping the privilege of creating purchasing power and therefore of making prices. According to Douglas every new productive process means the creation by the banks of more purchasing power, which after a time they must somehow retrieve and cancel. This can be done only if the prices of finished goods are raised high enough to absorb, when sold to ultimate consumers, the entire amount of purchasing power created by the banks, even though a part of it has been used to finance the manufacture of intermediate goods, not transferred to consumers. For this reason manufacturers are driven to raise prices by every means possible—by reducing production of consumers' goods at the expense of producers' goods, by expanding exports and by forming monopolistic combinations. This system of financial accounting, which is out of accord with the real situation, can be dispensed with only if prices are regulated so as to allow for the retention in the hands of the community of an amount of purchasing power corresponding to the increase in real capital. Prices must be set at a fraction of costs as calculated by the manufacturer, a fraction corresponding to the ratio of the cost value of total consumption (including capital depreciation and exports) to the money value of total production (including capital appreciation and imports). To reimburse the manufacturer, who will thus have to sell below cost, a national authority must create a sufficient amount of new purchasing power to balance the accretions to real capital. The essential condition for the execution of this reform is the restoration to the community of the banking function; that is, the ability to create financial evidences of

purchasing power. In each industry a bank owned by organized labor should be established through which the employers will disburse wages, salaries and dividends and the government credit the manufacturers with the difference between cost and prices. Once this is accomplished, the artificial limitation of production of consumers' goods will be relaxed, industrial efficiency will approach in practise its theoretical limits and production in general will be oriented in the interests of the consumer. The Douglas scheme of social credit, which is supported in England by the London weekly *New Age*, has attracted attention in recent years also in the United States but is practically unknown on the continent.

The foremost currency panacea on the continent is that proposed by Silvio Gesell, who advocates "shrinking" or free money. Gesell explains the exploitation of producers and the periodic breakdown of the distribution machinery by the inequality of the terms on which the owners of goods and the owners of money meet in the market: while most goods are apt to depreciate if they remain unused, money is an imperishable value. To restore the balance a new currency must be introduced which will impel its holder to exchange it for goods as soon as possible. Gesell maintains that the purpose would be answered by paper money which would depreciate every week by 0.1 per cent. It would accelerate exchanges and reduce their cost as well as eliminate interest. Of necessity a managed currency, its issue could be administered in such a way as to keep the price level stable. Gesell's unhoardable currency was actually tested in 1931 in Schwanenkirchen, a German industrial community; the experiment, conducted on a small scale, proved successful.

The German National-Socialist (Nazi) Labor party has its own scheme of economic reconstruction, the central feature of which is the abolition of "interest serfdom" by means of a currency reform. According to its economist Gottfried Feder the party is opposed not to capitalism but to its distortion, "mammonism," characterized by the hegemony of loan capital, which thrives by imposing upon the productive classes the burden of interest charges. There is no reason why the ownership of money pure and simple should yield a continuous income nor is there any ethical justification for it. The community is the source of all money and credit, and it is particularly irrational for the state to follow the methods of ordinary business and

borrow money at interest from private creditors. In connection with a housing scheme Feder advocates the establishment of banks which shall issue notes or book credits lent free of interest to the owners of the land for use in building construction. The banks are to be repaid within fifty years, during which period the currency thus injected into circulation will be gradually withdrawn.

It is too easy to condemn the post-war proposals or the earlier plans in the light of orthodox economic analysis; the obvious confusions involved are those of the labor cost of production with value which is vitally affected by demand factors and of money with capital or of short term credit to finance self-liquidating transactions with long term credit supposed to come from savings. Such criticism is relevant, however, only in so far as the assumptions underlying orthodox analysis are in perfect correspondence with economic reality, and it is futile because the denial of the validity of these assumptions is basic to the reasoning underlying the proposals. Much more relevant is the consideration that the plans do not go far enough. Most of them aim at a radical reconstitution of the circulating mechanism without infringing upon the individualistic and decentralized set up in the sphere of production; therein lies the principal logical fallacy and the most unyielding obstacle to their practical execution. The centralized regulation of the exchange of goods, such as is implied in authoritarian valuation, must involve regimentation of both consumption and production, while the abolition of interest, however accomplished, signifies the expropriation of the capitalist and a most radical revision of the relations between the various factors of production. In the present stage of capitalism the reform of currency and banking must form an essential part of any program of revolutionary reorganization, but it would be only a part integrally related to changes in the other components of the existing order.

KARL DIEHL

See: ANARCHISM; UTOPIAS; COMMUNISTIC SETTLEMENTS; PRODUCERS' COOPERATION; SOCIALISM; MIDDLEMAN; RENTIER; MONEY, MARKET; INTEREST.

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**LABOR EXCHANGES.** See **EMPLOYMENT EXCHANGES.**

**LABOR, GOVERNMENT SERVICES FOR.** Government services for labor comprise legislative provisions and administrative activities designed to regulate and improve the conditions of labor. These services are essentially a product of the modern industrial system. The rudimentary labor legislation which existed among most of the peoples of antiquity is not comparable to the elaborate government services for labor which have developed and are growing more comprehensive and complex in modern industrial countries. The services vary in character and scope from country to country, but in general they are most highly developed in the more industrialized countries, where wealth is greatest and labor has achieved significant status.

With few exceptions the welfare of labor did not receive much consideration before the nineteenth century. Most labor, except that of killing enemies, was held in contempt and was performed by slaves or serfs who had the status of cattle and enjoyed little or no governmental protection against their owners or masters. A few of the peoples of antiquity, however, developed laws and customs regulating working conditions. The laws of Hammurabi fixed the wages of laborers and limited the freedom of both workers and masters. The labor regulations embodied in the Mosaic law reproduce the more ancient laws and customs evolved by the Semitic peoples of Babylon and other eastern countries. Some principles in the codes of these ancient oligarchic and despotic states reappear in modernized form in the democratic states of today; thus the Sabbath, prescribed on theological grounds in the Mosaic code, is now considered not as a pious acceptance of the precedent established by a work weary Jehovah but as a necessity for health, efficiency, sound morals and good citizenship. When agriculture became unprofitable in Roman Italy the government passed laws improving the status of the slave tillers of the soil and facilitated transition to a sort of serfdom. Although in mediaeval Europe the church considered charity a duty, it can scarcely be said that there were any government services for labor in the modern sense. Mercantilism projected a series of government services for industry and commerce but practically none for labor. It can be broadly stated that until the beginning of the nineteenth century government regulation of labor conditions was designed to keep laborers in their place, to compel them to work for such wages and hours and under such conditions as their masters chose to offer. The Statutes of Labourers in fourteenth century England tried to keep down wages and prevent combinations of workers. Somewhat similar laws to offset demands for "excessive pay" were adopted in the North American colonies. Suppression not protection of the rights and welfare of workers was the predominating motive of the ruling classes; it still is to a large extent, but the motive of suppression is limited and modified by the increasing economic and political power of labor.

Government services for labor in their modern purposes and complexity are a direct result of forces set in motion and changes produced by the industrial revolution. No systematic or continuous development of labor legislation was

## Labor Exchange Banks — Labor, Government Services for 645

possible until modern industry had so altered social organization as to make possible the assertion of labor's needs and rights and their recognition as an aspect of the general social welfare. The first impetus to the development of government services for labor came from recognition of the abuses and degenerating influences of the early factory system, particularly the danger to the community incident in the exploitation of women and children and in certain occupational diseases. Humanitarians and social reformers insisted on the necessity of enforcing minimum standards for the good of the enlightened community, and others argued that the "future of the race" (often interpreted as its ability to provide efficient soldiers) was threatened by unrestrained industrialism. The steady increase in the number of industrial wage-workers and their organization into unions and labor parties have in some cases enormously strengthened the pressure for legislation and other government services for labor. Thus the elaborate labor legislation of Bismarckian Germany had as one of its main purposes the prevention of the spread of socialism, and this was equally true of the rudimentary labor legislation which arose in Russia prior to the World War. Another contributing factor was the idea that better working conditions meant higher productivity of labor; in fact labor standards were sometimes raised in order to assure the victory of the employer with a modern production technique over his backward competitors.

Modern humanitarian labor legislation in contrast to former merely repressive laws began in England with the Health and Morals of Apprentices Act of 1802, an act to regulate the conditions of child labor. The act itself produced little change in factory conditions because no adequate administrative machinery was provided, enforcement being placed, as in the case of the Elizabethan poor laws, in the hands of justices of the peace, who generally ignored the law. It took more than twenty years of agitation to prohibit children under nine from working in cotton factories and to limit the work of children between nine and sixteen to twelve hours per day and sixty-nine hours per week, exclusive of meal times. Reports of investigating commissions indicate that outside the regulated cotton factories physical weakness and exhaustion set the only limits upon the age and hours of employment recognized by many employers. Early legislation and its enforcement met with determined opposition from employers and their

sympathizers; John Bright, for example, threatened to close his works if the state interfered between him and his workers. But the principle of state interference in industry for the protection of workers as an important measure of social welfare was firmly established by the early factory acts. From these small beginnings have grown the general recognition of the necessity of public regulation of private employment, the extensive systems of laws, court decisions, administrative regulations and enforcement agencies for the regulation of employment relations, and other government labor services developed in Great Britain and the British Empire.

Outside the British Empire the development of government labor services has been very uneven. In general they have expanded with the development of industry, the labor movement and democracy. Economically backward countries, where the rising factory system usually duplicates many of the worst features of the earlier industrialism in England, offer few services to labor. Even the United States, highly industrialized and democratic, has lagged behind England and Germany in government services for labor, although government services for industry and commerce have developed on a large scale. This lag can be explained only in part by the existence of vast undeveloped resources, the great opportunities offered ambitious individuals to rise out of the working class and the consequent fluidity of classes, for these conditions existed also in New Zealand and Australia, where government services for labor far surpass those of other countries. Other causes are comparatively high wages, the strength of American capitalism and its resistance to social legislation, the peculiar heritage of an extreme individualism, relative lack of interest in social legislation on the part of the labor movement and the development of "welfare capitalism" in large scale industrial enterprises.

The order of evolution of the various government labor services in different countries has also varied considerably. The typical chronological sequence has been as follows: prohibition of child labor in certain employments and regulation of hours of labor for both children and women; establishment of sanitary and safety standards; creation of factory inspection and special commissions to investigate conditions of labor; provision for conciliation and arbitration of industrial disputes; provision of compensation for disabilities due to work accidents and sickness; machinery for fixing minimum



wage rates; establishment of state health (sickness) insurance and old age pensions; provision for compulsory unemployment insurance; governmental endeavors to promote better employer-worker relations by setting up machinery for the participation of workers in the management of industry. In some countries these services appear in isolated, often unrelated forms; in others they consist of comprehensive, unified systems of social legislation and the necessary administrative machinery.

In the development of government labor services laws regulating the work of women and children were followed shortly by legislation establishing standards of shop sanitation, ventilation, lighting and protection against dangerous machines and work places. The difficulty of setting up safety standards by legislative enactment has led most governments to the expedient of authorizing administrative agencies to work out safety codes to deal with particular hazards in each industry. In the United States greater emphasis has been given to the development of safety codes than in other countries because the industrial accident rates have been so alarmingly high. The National Safety Council, an employers' organization, has cooperated with state labor officials in perfecting safety codes for nearly all industrial undertakings.

The passage of labor legislation led to the organization of administrative agencies designed to execute the will of the legislatures as interpreted by courts or administrative officials. The Factory Act of 1833 in England created a system of factory inspection to enforce the factory laws, which had theretofore remained in many instances merely dead letters. Since then practically every country having any considerable industrial development and labor legislation has provided some administrative agencies, but their adequacy differs widely from country to country. The best inspection systems and the best trained inspectors are to be found in the industrial nations of Europe; English factory inspectors and investigating commissions in particular have earned an enviable reputation for efficiency and devotion to duty. Many economically backward and some highly advanced countries which can boast of comprehensive and progressive protective labor laws have failed to provide adequate and efficient means of enforcement. China, for example, has passed legislation embodying the provisions of the draft conventions adopted by the International Labor Conference respecting limitation of

hours of work, vacation with pay for women at childbirth, prohibition of the labor of children below the minimum age, prohibition of night work of young persons and the prohibition of the use of white phosphorus in match manufacturing. No enforcement machinery exists, however, and the laws are scarcely more than moral yearnings inscribed on the statute books. It is asserted that this failure is due to the constant and continuing turmoil which has prevented the establishment of any effective national government since the establishment of the republic. Mexico also has an extremely progressive system of social legislation which is not rigorously enforced, although in comparison with prerevolutionary days labor services there are considerable. In most of the other Latin American countries labor services have grown markedly since the World War under the influence of increasing industrialization, of a growing labor movement and, to a certain extent, of the International Labor Organization, all of which are encouraging new ideas of state regulation of labor conditions. Nevertheless, labor legislation is still meager and rarely enforced. Among the most advanced industrial countries the United States offers many conspicuous examples of government labor agencies which lag far behind the enactment of labor laws. A great variety of labor laws or a total lack of them and every degree of adequacy or inadequacy in enforcement may be found in the forty-eight states of the union.

The development of government labor services with their emphasis on social and class cooperation led naturally to state action for the prevention or settlement of industrial disputes, which increased in intensity and magnitude with the growth of industrialism. Spectacular outbreaks of "peaceful" industrial war because of their dramatic features attract much more public notice than unemployment, sickness and accidents. Pressure for state interference in industrial disputes came from both capital and labor, although not always simultaneously and with the same purposes in view. Most western countries now have agencies to aid employers and employees to adjust their differences without resort to strikes or lockouts and to resume employment relations in cases of open rupture.

Great Britain has evolved through long experience a comprehensive system of non-compulsory conciliation and arbitration. Only briefly during the World War did the United Kingdom depart from its traditional policy of free agree-

ments and resort to compulsory arbitration, but the failure of compulsion to compel caused it to be dropped as soon as the war emergency ended. No large claims, however, can be made for the success of the non-compulsory British system. Many governments have enacted drastic laws forbidding strikes and lockouts entirely or until after public investigation and report. New Zealand was the first country to try to bring agreement by compulsion; in 1894 it enacted a compulsory conciliation and arbitration law applying to public utilities and certain essential industries, under which the rates fixed by the arbitration tribunal were binding upon both employer and employee. The fundamental principles of the New Zealand law were adopted by the Australian states (except Victoria and Tasmania) and the Commonwealth of Australia. For twelve years subsequent to the enactment of compulsory arbitration New Zealand was known as "the land without strikes," but since 1906 strikes have been about as frequent as in other countries with similar industrial conditions. Canada has tried to prevent strikes with the Industrial Disputes Investigation Act of 1907, which has since been amended; the act provides that no strikes or lockouts are allowed before the board of inquiry set up by the Department of Labor has investigated the causes of the dispute and made a report thereon. Neither party is obliged to accept the decision of the public investigators, and in fact even outlawed strikes have been merely reduced in number rather than completely eliminated.

Germany has built up what is perhaps the most elaborate and comprehensive system for conciliation and adjudication of labor disputes. The Industrial Courts Act of 1890 created permanent courts for deciding labor disputes, in which employers and workers are equally represented. Since the World War the authority of these courts and their conciliation machinery has been greatly extended by making them responsible for the interpretation and enforcement of collective agreements. Germany's conciliation system has developed into a compulsory arbitration system with compulsory enforcement of awards. In 1926 the Reichstag created a unique system of labor courts for adjudicating labor disputes; with much broader powers than the courts created in 1890 these courts have exclusive jurisdiction in all labor cases and are entirely independent of the ordinary courts. The labor court system comprises local labor courts, district labor courts and a federal labor court,

as the court of last resort; courts in a particular state are under that state's jurisdiction.

In the United States attempts to prevent strikes were made by Colorado with a State Industrial Commission based on the Canadian legislation and by Kansas with a Court of Industrial Relations, which were to investigate and act on labor disputes. Both measures met with the hostility of capital and organized labor (especially the latter) and failed to prevent strikes. Many states have some sort of governmental machinery for conciliation and arbitration. The federal government has had an industrial conciliation service, started in 1888 but not given any real functions until 1913, the main function of which is investigation; it has a small personnel and is not equipped either legislatively or administratively to accomplish any very important work. Another federal conciliation service is the Board of Mediation, which functions exclusively among the railroads and is supplemented by the authority of the Interstate Commerce Commission to regulate conditions of work and safety.

The conciliation machinery set up by governments has helped to adjust labor disputes as well as to prevent their occurrence in many cases. Compulsory laws seem to have accomplished little, however, except to send some workers to jail and to increase rancor and opposition to governmental interference. Government interference in labor disputes usually redounds to the benefit of the employers, since governments are mainly interested in preserving the status quo, which labor strives to upset more frequently than capital, and act in the name of "the public," which desires industrial peace—at practically any price. Government interference in labor disputes appears in its most drastic form in Fascist Italy and Communist Russia, where strikes are unconditionally forbidden. Both have severely regulated employment and have practically destroyed independent action by laborers who singly or collectively might seek to achieve advantages at the expense of other groups.

An outgrowth of the government service involved in labor conciliation, mediation and arbitration is the movement for state action to promote the "participation of labor in management." The movement originated in the United Kingdom during the World War, when radical shop stewards in some plants repudiated collective agreements made for the whole nation, even though the officers of their own trade unions had negotiated them. To counteract this rebellion

and to promote organization in unorganized industries the Whitley councils consisting of representatives of employers and workers were set up by legislation. There are a national joint council for each industry, district joint councils and a local works committee in each plant. Their purpose is to give workers frequent opportunities to air their grievances and to discuss any matters of shop management with managers and employers. It is claimed that the councils have brought about a better understanding between employers and workers and a higher morale in industry, but proof is lacking or uncertain. Few Whitley councils would have been formed without the strenuous efforts of the government and still fewer would have survived. The same meager success met the somewhat similar works councils in Germany, an extremely elaborate system set up by the government to give labor a "share" in management. These attempts are not strictly governmental labor services but they are animated by the same general motive—better understanding, cooperation and peace between labor and capital.

Among the more important government labor services are benefits for or insurance against sickness. The fact that more physical suffering and economic distress are caused by illness than by accident disabilities was recognized in some districts and industries in Germany and Austria, where sick benefits were established with government sanction even before accident benefits were first inaugurated. The detrimental effects of sickness, accidents, invalidity and old age upon workers impelled Germany to adopt in 1883 the famous Social Insurance Act, which obliged employers in most industries to organize mutual associations to insure workers against disabilities from these causes. The money benefits provided were small, but the act clearly recognized the principle of public responsibility to workers incapacitated for work by any cause. Austria passed similar legislation in 1888 and other European countries soon followed—Hungary in 1891, Norway in 1909 and England in 1911. Today the principle of compulsory general health (sickness) insurance is recognized in all advanced European countries, but in only two countries outside of Europe—Chile and Japan. There is no insurance against illness in the United States or Canada, although European experience has amply demonstrated that illness is an insurable hazard and that the administration of health insurance is little if any more difficult than that for accident compensation.

Not until 1897 did the United Kingdom adopt a compensation law, thus discarding the three atrocious common law doctrines of fellow servant, contributory negligence and assumption of risk, which made it practically impossible for a worker to collect damages from his employer for work injuries. Most advanced industrial countries now have legislation providing for work accident compensation, although the laws differ widely in content. In the United States, for example, all but four of the forty-eight states have some kind of workmen's compensation law, but no two laws agree completely on any one point. In some instances identical language in the laws of two or more states has been so interpreted by the state courts as to make the identical provisions quite dissimilar in effect. The workers in only five states and in the federal service receive compensation for industrial diseases; four other states grant compensation for certain listed diseases only. The United States and Canada, although they lag in other government labor services, have the most advanced types of law and administration in workmen's accident compensation.

That labor legislation originates in attempts to protect the most helpless and exploited groups of workers is evidenced again in the development of legislation for setting minimum wages. Minimum wage legislation was first enacted in Victoria, Australia, in 1896 to protect workers in "sweated trades." The principle, which applied from the beginning to male as well as female workers, has been accepted in all the Australian states and in New Zealand. The setting of wage rates, even minimum rates for women and children, was long fought by workers and employers alike as an undesirable or unwarranted interference with employment. It is still opposed by most American trade unionists on the ground that a minimum wage is set at the minimum of subsistence level and that the minimum so fixed becomes the maximum. The United Kingdom adopted the principle in 1909 as applying to women workers in certain "sweated" trades where wages were exceptionally low but has since extended it to cover men and women in practically all unorganized or weakly organized trades. The Trade Board acts provide for the fixing of minimum wages by representatives of employers and employees. These acts effectively repeal the ancient English common law principle known as freedom of contract, which safeguarded the "right" of an employee to contract "freely" with his employer for such wages as the employer

was able to impose. The minimum wage is obligatory; an employer accused of paying less than the minimum wage fixed by a board may be sued by his employees or by the officials of the Ministry of Labour and if found guilty is subject to fine as well as to the payment of all withheld wages to his employees. The principle of minimum wage rates is well established and is accepted in practically all European countries; in the United States its application has been brief and unimportant. In practise the rates fixed are usually below the level of "health and decency," but they recognize the standards of existence which obtain in the given trade. The International Labor Office has given much consideration to the minimum wage problem and has recommended that a minimum wage draft convention be adopted by the Labor Conference.

Unemployment insurance appears to be an inevitable corollary and a logical culmination of government labor services. Unemployment relief funds were first established by trade unions. Today unemployment prevention and relief are recognized in Europe as the most important services the government owes to workers. Seventeen European countries and Queensland, Australia, have adopted unemployment insurance systems. If the Wisconsin system of unemployment reserves be included, eighteen jurisdictions throughout the world have provided unemployment insurance, representing nine compulsory and nine voluntary systems. The United Kingdom established in 1911 the first nation wide system of unemployment insurance, based on an efficient network of employment exchanges for the entire country organized under the Labour Exchange Act of 1909. In 1920 unemployment insurance was extended to all workers except those engaged in agriculture, domestic service and casual labor. An important incidental service provided by this act is a practically complete registration of all unemployed persons. Since the war unemployment benefits have been extended to meet the unemployment and poverty caused by economic depression.

Among the important and best developed activities of government labor bureaus is the compilation of statistics and the preparation of reports dealing with conditions relating to labor. This service, performed for the benefit of employers and employees alike, dates from about the middle of the nineteenth century; now all but the most backward countries publish more or less satisfactory labor statistics. The information includes statistics of wage rates, earn-

ings, hours of work, cost of living, employment and unemployment, strikes and lockouts, industrial accidents, workmen's compensation and other subjects connected with employment. The publications of the United States Bureau of Labor Statistics and of some of the state bureaus are among the most complete except for the lack of unemployment statistics; Canada, the United Kingdom, Germany, Australia and New Zealand compile very full and useful information. In addition to regular statistical reports the information includes special investigations and reports on various aspects of labor in industry. This service would be much more useful were statistical aims and methods standardized internationally. It is impossible to make accurate comparisons of such a relatively simple matter as the rate of fatal accidents in mines and factories in different countries, while in the field of earnings and cost of living only rough guesses as to relative levels and rates of change are possible. The International Labor Office is trying to bring about some degree of standardization, but it will be many years before the fixed traditions and practices in the various statistical offices can be modified so as to yield comparable labor statistics.

Along with variations in the scope and complexity of government labor services in the different countries there are great differences in the administrative organization of the services. The range is from wholly inadequate administrative machinery in such countries as China to the elaborate and efficient ministries of labor and other agencies in the United Kingdom, Germany, Belgium, France and other advanced industrial countries.

The United Kingdom, which in 1931-32 appropriated £119,000,000 on its labor and social services out of the central government's total appropriations of £865,000,000, has a well organized Ministry of Labour. This ministry, created in 1917, has three departments particularly concerned with labor services: the industrial relations department; the general department, comprising the trade boards division, the statistics division and the International Labor Office division; and the employment and insurance department. The industrial relations department administers the Conciliation Act of 1896 and the Industrial Courts Act of 1916, which provide for the prevention and the settlement of trade disputes of all kinds. The Whitley councils are organized under this department. In the general department the trade boards division administers the Trade Board acts, which

provide for the establishment and enforcement of minimum wage rates in unorganized trades; the statistics division gathers and compiles excellent reports on employment, wages, hours and conditions of labor, cost of living, strikes and lockouts, trade unions, employers' associations and other important subjects relating to workers; the International Labor Office division serves as the liaison office between the British government and the International Labor Office and has representatives from the Home Office, the Board of Trade, the Treasury, the Foreign Office, the Colonial Office and the Ministry of Agriculture. The employment and insurance department administers the Employment Exchanges and the Unemployment Insurance acts. The ministry has approximately 1160 local offices grouped in seven major divisions. In addition to the Ministry of Labour various other ministries and departments are entrusted with the administration of various labor laws. Factory inspection is carried on by the Home Office; the Health Insurance Act is administered by the Ministry of Health; the Ministry of Transport looks after the hours and conditions of work of railway employees; the mines department in the Board of Trade looks after the health, safety, wages, hours and conditions of workers in mines; while other ministries perform services to labor in particular industries.

In spite of the disorganization and poverty caused by the World War Germany has clung to her historic policy of protective labor legislation, and the German Ministry of Labor created in 1918 is perhaps the most comprehensively organized labor service agency to be found anywhere, with the possible exception of Soviet Russia. It consists of six divisions dealing with general policies; social insurance; labor law, labor protection, wages and social questions; employment exchanges, unemployment insurance and relief; with welfare services, comprising social relief, housing and land settlement; and with pension law. There are also seven subdivisions and fifty-four sections. In 1929 its expenditures amounted to 723,367,000 marks. France has had since 1906 a Ministry of Labor, Hygiene, Assistance, and Social Welfare, which is now divided into four directorates subdivided into fourteen bureaus. In addition there are three services dealing with actuarial matters, statistics and private insurance societies, and a large number of councils and commissions. Most types of labor service are covered, including labor exchanges, unemployment, regulation of labor and

wages, industrial hygiene and safety and housing. It expanded its functions and improved its administrative apparatus after the passage of the social insurance law in 1928, although each insurance fund is managed by an autonomous body with the council of administration elected at a general meeting of insured persons. In addition there is in France a national labor supply council, created in 1920 and attached to the prime minister's office in 1925, which coordinates the work of employment exchanges and regulates the influx of foreign and colonial labor. In Italy since 1923 services to labor have been placed in the Ministry of National Economy, which includes a general directorate of labor and social welfare, national social insurance fund, national industrial accident fund, control statistical office, general inspectorate of industry, general directorate of agriculture, general inspectorate of mines and national fuels, general inspectorate of industrial education and some other services affecting labor. The corporations into which workers and employers are organized in each major industry carry out the policies determined by the central government. A peculiar government labor service in Italy is the *Dopolavoro*, which is similar to the American Young Men's Christian Association. It was originally a private enterprise but it now functions as an organ of the Fascist state.

The scope of government labor services is more comprehensive in the Soviet Union than in any other country, although the administration is as yet imperfect. This flows from the theory and structure of the Soviet state, which makes its primary concern the welfare of labor. Legislation and other government labor services consequently are designed to cover every need and risk of industrial and agricultural workers. The All-Union Commissariat of Labor is supplemented by similar commissariats in each of the constituent republics. Within these commissariats are bureaus of labor protection which supervise the safeguarding of workers in conjunction with provincial and local administrative organs; the work although centralized provides for a large measure of local autonomy. The unions participate in labor protection through the factory committees on labor protection, which work in conjunction with the inspectors. Measures of labor protection are based on the theoretical material furnished by over eighty institutes engaged in research on working conditions and by factory research departments and independent institutes. Another department of

the Commissariat of Labor is the Bureau of Central Administration of Social Insurance. Social insurance in the Soviet Union includes all workers and all forms of insurance—sickness, invalidism and disability (full pay), old age and maternity (full wages for the working mother two months before and after childbirth, nine months' maintenance allowance for the child). No unemployment insurance is provided since there is presumably no unemployment. The collections and expenditures of insurance funds are under control of the labor unions. Total expenditures on labor protection and social insurance in 1931 amounted to 2,500,000,000 rubles. The Commissariat of Health spent another 1,271,000,000 rubles on public health (including health work in factories).

The administrative machinery of the government labor services is not very highly developed in the United States, where social legislation in general is backward. After the Civil War trade unions and labor leaders demanded government bureaus devoted to the interests of labor. The first government labor agency was the Massachusetts Bureau of the Statistics of Labor, formed in 1869; fourteen states created similar bureaus before the federal government created the Bureau of Labor in the Department of the Interior in 1885. Shortly thereafter the Knights of Labor demanded a department of labor; this was created in 1888 and absorbed in 1903 by the Department of Commerce, which became the Department of Commerce and Labor. The present United States Department of Labor was established in 1913 to "foster, promote and develop the welfare of the wage-earners, to improve their working conditions and to advance their opportunities for profitable employment." It consists of the Bureau of Labor Statistics, which makes statistical reports upon hours, wages, productivity and conditions of labor, wholesale prices, retail prices and cost of living, industrial accidents and hygiene, workmen's compensation and other important subjects; the Bureau of Immigration and the Bureau of Naturalization; the Children's Bureau, which deals with child welfare in general as well as employment, wages, hours and conditions of child workers; the Women's Bureau, which makes special studies relating to the employment of women; the Employment Service, which continues to operate in a much curtailed and ineffective manner a national system of employment offices in conjunction with the several states; and the Division of Conciliation, which attempts to medi-

ate and settle certain important labor disputes when invited to do so. The department is handicapped by lack of authority, the backward state of labor legislation and labor services generally, and inadequate financial resources. It has about 4908 officials and employees, and its appropriation in 1929-30 amounted to \$11,322,000 and in 1932-33 to \$12,920,770.

Many important services to labor are performed by other federal departments. In the Department of the Interior the Bureau of Mines, created in 1910, has charge of safety work and the reporting of mine and quarry accidents; the Bureau of Navigation supervises the employment of seamen. In the Treasury Department the Bureau of the Public Health Service makes studies of occupational diseases and fatigue in relation to lost time and per capita production; the Interstate Commerce Commission exercises jurisdiction over wages, hours and conditions of railroad labor and accidents; the United States Employees' Compensation Commission handles industrial accident compensation cases for all federal employees and all employees and employers in the District of Columbia; the Federal Board for Vocational Education, created to promote vocational education in cooperation with the several states, also administers the expenditure of federal funds provided to supplement state appropriations for the rehabilitation of persons disabled in war and in industry.

The administrative machinery of government services is also backward in most of the states of the American union. The early American state labor departments were agencies for investigating and studying labor conditions and making recommendations to the legislatures. At present the labor departments in most of the states are responsible for enforcing the labor laws; many also have quasi-legislative powers in connection with safety legislation and quasi-judicial powers under workmen's compensation acts. The departments generally administer some laws which are not properly labor legislation and have some duties not connected with labor problems. A few departments are not charged with enforcement of the labor laws. In about a dozen states there are separate labor and compensation departments. Nearly all the labor departments are understaffed and their functions are usually performed less efficiently than in England or Germany. In 1929 the total expenditures on labor administrations of all the states did not exceed \$6,539,000 (exclusive of workmen's compensation administration), of which \$3,355,000

was expended by three states—New York, Pennsylvania and Illinois. Florida has no labor bureau and its only labor official is a factory inspector; the same holds true of Mississippi, and New Mexico has only a coal mine inspector. Some states have no factory inspection and some have no inspection of mines and quarries. In most of the states labor protection suffers because inspectors are not required to pass civil service examinations to prove their competence and are not systematically trained in the duties and technique of the service. Massachusetts, New York, Ohio and Pennsylvania have highly organized departments of labor. The New York department, which may be taken as the model, is divided into seven sections: a bureau of inspection, which is responsible for enforcement of laws and prosecution of violations; a division of industrial codes, which holds hearings and investigations preparatory to the formulation of new codes; an engineering division, which examines and approves plans for public, industrial and commercial buildings; bureaus of industrial hygiene, of women in industry, of statistics and information and of industrial relations (mediation and arbitration). It also operates public employment offices in various cities. In general the most highly organized service in the United States and also in Canada is the administration of workmen's compensation. A unique quasi-official organization, the International Association of Industrial Accident Boards and Commissions of the United States and Canada, has been formed to establish and better standards of administration and to improve the compensation laws of both countries. The Association of Government Labor Officials of the United States and Canada has similar functions in the broader field of general labor administration.

The growth and increasing complexity of government labor services make larger and larger demands upon the personnel employed to maintain the services, creating a large body of experts with a knowledge of economics, technology and psychology. The character and ability of the personnel naturally differ from country to country; in general they are lowest in the backward countries and the newer industrial nations and highest in Europe, with the United States occupying a middle position. Jobs in the American services are frequently dispensed as patronage to politicians and labor leaders who are presumed to influence the workers' votes; these conditions are, however, slowly changing, and a body of experts is being developed partic-

ularly in the labor services of the federal government. In the advanced European countries the character and ability of the experts in the government labor services are extremely high; the requirements are stringent and the work is considered a life profession. Factory inspectors, for example, must pass severe examinations which necessitate arduous preliminary study and training. Political appointments are rare, tenure is secure during good behavior and promotion determined by competence and service. Because of the introduction of an international civil service system high standards prevail also among the expert personnel of the International Labor Organization; this has had an important influence on raising personnel standards in the labor services of the more backward countries.

The International Labor Office marks the culmination of decades of effort for common international action on the improvement of labor conditions. In the twelve years of its existence the International Labor Organization has been of great service in directing attention to sub-standard conditions of labor in many countries and in fostering public opinion favorable to higher standards. The importance of the International Labor Organization services to labor should not be judged by the number of draft conventions adopted by the labor conferences, the number of ratifications by governments and the number of new laws passed to carry these conventions into effect. Of much greater significance is the education of public opinion in all countries to the importance of the standardization of labor legislation, improvement in the quality of labor administration and the necessity of strengthening both the national and international services which governments may perform for labor.

ROYAL MEEKER

*See:* LABOR; LABOR LEGISLATION AND LAW; SOCIAL INSURANCE; HOURS OF LABOR; INDUSTRIAL HAZARDS; INDUSTRIAL HYGIENE; SAFETY MOVEMENT; WORKMEN'S COMPENSATION; EMPLOYERS' LIABILITY; MINIMUM WAGE; WOMEN IN INDUSTRY; CHILD, section on CHILD LABOR; EMPLOYMENT EXCHANGES; HOUSING; ARBITRATION, INDUSTRIAL; CONCILIATION, INDUSTRIAL; COURTS, INDUSTRIAL; INDUSTRIAL RELATIONS COUNCILS; INDUSTRIAL RELATIONS; LABOR-CAPITAL COOPERATION.

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**LABOR INJUNCTION.** The use of the injunction in industrial controversies gives as striking an illustration as the law affords of the truth that in the domain of ideas, no less than in the biological world, an organism cannot be torn from the context of its environment without destroying its meaning. Abstractly the labor injunction is merely the application of a generalized legal idea to particular circumstances. But these introduce social and economic factors which give the injunction a unique setting and create for it an essentially new situation.

The injunction is the powerful and staple device of the equity side of Anglo-American legal administration. The first authoritative resort to this remedy in a controversy between employer and employees was made by an English court. But the innovation did not take root in its native soil. Until its recent formal revival in England the labor injunction remained distinctively United States law. As in other fields of social endeavor similar concepts have, however, penetrated also into Canada. While as late as 1896 the chief justice of Massachusetts could say in opposing a labor injunction sanctioned by his court that the "practice of issuing injunctions in cases of this kind is of very recent origin" [*Vegeahn v. Guntner*, 167 Mass. 92, 100 (1896)], the idea once transplanted to America has burgeoned exuberantly.

An English vice chancellor in 1868 restrained striking employees "from printing or publishing any placards . . . whereby the property of the Plaintiffs, or their business might be damaged" [*Springhead Spinning Co. v. Riley* (1868) L. R. 6 Eq. 551]. This precedent was not followed by the English courts, indeed was criticized. So far as it looked to law England continued to rely upon criminal law for the maintenance of industrial peace. After the famous Taff Vale judgment, whereby union funds could be reached for wrongful acts by union members in the course of a strike, the Trade Disputes Act of 1906 in order, as Vinogradoff has said, "to allow organized labour to exert its action as a counterpoise to the power of capital wielded by the employers" [*Collected Papers*, ed. by H. Fisher, 2 vols., Oxford 1928, vol. ii, p. 323] gave unions complete immunity "in respect of any tortious act." The general strike of 1926 caused Parliament in 1927 to restrict the immunities of the act of 1906 to cases only of "legal" strike—illegal strikes being defined as those whose purpose was other than to further a trade dispute or those designed to exert pressure upon the government [Trade Disputes and Trade Unions' Act, 17 & 18 Geo. v, c. 22 (1927); see the debates upon this measure, particularly the speech of the Marquess of Reading in Great Britain, Parliament, House of Lords, *Parliamentary Debates*, vol. lxxviii (1927) p. 67-68]. The act of 1927 empowered the attorney general to apply for an injunction against the use of trade union funds for the prosecution of illegal strikes. Ramsay MacDonald's second Labour government in 1931 sponsored a repeal of the act of 1927 and a return to the status created by the law of 1906. The attorney general,



who was in charge of this bill, referred as an example to be avoided to the unique record of American experience with the labor injunction [Great Britain, Parliament, House of Commons, *Parliamentary Debates*, vol. ccxlvii (1931) p. 392-93]. The bill failed, but the act of 1927 has not occasioned a change in English practise.

In the United States appeal to the courts for injunction against strikers was facilitated through the adventitious fact that in the 1870's, following the panic of 1873, great railroad properties were in the hands of receivers and thus, theoretically, administered by courts. Obstructions to the operation of such railroads were treated as obstructions to the courts, and judicial orders against strikers naturally suggested themselves. Disobedience of such orders was followed by summary punishment for contempt of court, which had the advantage of avoiding the cumbersome process of the criminal law. To grant injunctions against strikers in cases other than receiverships was an easy transition for lawyers and judges.

In law as elsewhere imitation is a potent factor. But in the spread of the labor injunction the incisive and quick nature of the remedy was a powerful ally of imitation. An application was made in a labor case for an injunction apart from a receivership in New York in 1880 but seems to have been refused. Such injunctions, however, were granted in Maryland and Ohio in 1883, in Iowa in 1884, in Pennsylvania and Massachusetts in 1888. There were doubtless other instances; legal records in such matters are most inadequate. As a legal institution the labor injunction reached its maturity in 1895, when in the famous Debs case the Supreme Court sanctioned the injunction by which probably the Pullman strike was broken. Thereafter the labor injunction became a customary weapon in the strategy of American industrial conflicts. While no authoritative statistics as to the number of injunctions are available, there are a few straws. For the federal courts from 1901 to 1928 the official reports disclose 118 applications; a congressional investigator in 1914 found 116 unreported injunctions; a private inquiry by Senator Pepper of Pennsylvania disclosed that during the railway shopmen's strike of 1922 nearly 300 injunctions were asked for and granted (see Pepper, G. W., in American Bar Association, *Report*, vol. xlix, 1924, p. 174-80). Of these only 12 seem to have been officially reported. For Massachusetts an official investigator revealed more than 260 cases between 1898 and 1916, and

for New York City there were at least 250 cases between 1894 and 1928.

The grounds avowed by courts for resorting to the injunction in labor cases are the actual or threatened damage to property rights and inadequacy of legal remedies. To resort to the criminal law, it is urged, is to lock the barn after the horse is stolen, and suits for money damage are futile because money cannot compensate; too many suits would have to be brought in view of the continuing nature of the menace, and the strikers are financially irresponsible. Despite the novelty of the remedy and the serious differences between a labor controversy and the situations for which injunctions had been historically employed, the Supreme Court in the Debs case concluded that "the jurisdiction of courts to interfere in such matters by injunction is one recognized from ancient time and by indubitable authority." Contemporary legal scholarship challenges this claim.

The labor injunction derives significance from the mode by which it has operated. What is called procedure determines results. In theory the final injunctive decree alone is an adjudication on the merits; temporary restraining orders and temporary injunctions are nominally provisional. In fact, however, the restraining order and temporary injunction usually register the ultimate disposition of a labor litigation, which seldom persists to a final decree. Lack of resources may frustrate pursuit of the litigation or, as is often the case, the strike has ended before the final stage is reached and ended not infrequently as a result of the injunction. Of the 118 officially reported federal court cases from 1901 to 1928, 70 involved ex parte orders and 88 temporary injunctions. Twelve of the ex parte orders and 56 of the temporary injunctions were in fact final dispositions. Of 35 temporary injunctions issued by the New York courts from 1923 to 1927 none reached a further stage.

The theoretical safeguards attending the final decree are therefore largely inoperative. Here as elsewhere in law its formal doctrines tell very little of what law does for those who invoke it or against whom it is invoked. Not the so-called principles governing the "rights" and "duties" of the combatants in a strike, but the procedural characteristics of provisional relief furnish the key to an understanding of the labor injunction in action. The truth of the situation is seldom explored through oral testimony, and the proceeding largely resolves itself into a clash of affidavits. These, because they flow from the pas-

sionate partisanship of a labor struggle and are drafted more with an eye to the requisites of legal formula than of truth, are generally contradictory in all important particulars. The judge determines the facts without the aid of a jury, and the usual safeguards for sifting fact from distortions or imaginings—personal appearance of witnesses and cross examination by opposing counsel—are lacking. Finally, the opportunity to correct error by appeal is extremely narrow and seldom exercised.

To be sure, violence is an incident and too often an ingredient of industrial strife in the United States. Latter day labor racketeering is still another story. Whatever the cause for this violence—the ready resort to violence generally, the survival of pioneer traditions, the less rooted habits of the American population, the exacerbation of feeling or the actual incitement to violence by agents provocateurs and proprietary police—the injunction serves theoretically as a swift and effective check. Legal theory therefore justifies it in so far as it explicitly restrains illegal conduct. But departures from this theory are abundant and indeed common. The text of the injunction has grown to be an elaborate and complex document—a fearsome and ambiguous instrument reaching far beyond outlawed excesses and snuffing out trade union activities which as a matter of abstract law are deemed legitimate. Injunctions have restrained innocent conduct through fear of violation of general and all inclusive terms of doubtful meaning. They have restrained conduct that is clearly permissible, like furnishing strike benefits, singing songs, maintaining tent colonies; permissible, that is, on the theory that it is the function of the law merely to keep the peace and maintain the ring between employers and employees according to the prevalent standards of fair economic combat. The dangers of these dragnet decrees have led a few of the more farsighted judges to attempt to define with particularity the line between forbidden and permitted conduct. What can be done by an imaginative and conscientious judge was shown during the railroad strike in 1922 by Judge Charles F. Amidon [Great Northern Ry. Co. v. Brosseau, 286 Fed. 414 (1923)]. While the injunction is the result of a judicial proceeding between two litigants, its obligations frequently, especially in the federal courts, attach to the general public. By the easy device of blanket clauses its prohibitions extend to “all persons whomsoever” or “all persons to whom notice of this order shall come.” All aware of the injunc-

tion must obey it or be punished for contempt.

The practical uses to which the labor injunction has been put have turned it into a persisting political issue. It has maintained itself thus to no small degree because disinterested legal opinion has supported the essential grievances of labor. Some of the most learned scholars of equity procedure have found the labor injunction inconsistent with the traditions and philosophy of the whole equitable process. Ever since the Debs case it has been urged that except under appropriate safeguards and within a defined and restricted area the injunction is not an appropriate intervention in the conflict of forces between employers and employed. The decree places the power of the state upon one side of a complicated social struggle in advance of and frequently altogether without that careful ascertainment of fact which is the traditional protection of the innocent; the injunction invades by indirection constitutional safeguards that speech, press and assembly shall be free from previous restraints; vague and all inclusive terminology customarily employed results in sweeping decrees which subject all activity—legitimate no less than illegitimate—to the peril of prosecution for contempt; and therefore the injunction becomes in effect a penal code enacted, interpreted and enforced by a single judge without the constitutional securities available to persons accused of crime.

The extent to which these consequences of the injunction affect the labor conflict lies almost wholly in the realm of guesswork. There are as yet no dependable data regarding the effect of the injunction upon the progress of unionization in America; and equally meager and inconclusive is the evidence, aside from opinion testimony, of the relation of injunctions to the results of particular strikes. Does interdicted conduct cease or is it intensified? Are injunctions enforced and to what extent and with what consequences? Answers to such questions require an intensive and subtle analysis of the elusive factors of particular controversies in their economic, social and psychological settings. With the exception of some studies in the New York garment industry by Brissenden and Swayzee and a recent inquiry into a few southern strikes by McCracken, social economists have left this field of inquiry unexplored. But considerable evidence has necessarily been gathering upon the effect of the injunction on public opinion, particularly on opinion generated by the feelings of the workers. To the United States Commission on Industrial Relations its director in 1915 reported that

"... there exists among the workers [of whom there were then said to be twenty-five million] an almost universal conviction that they... are denied justice in the enactment, adjudication, and administration of law, that the very instruments of democracy are often used to oppress them and to place obstacles in the way of their movement toward economic, industrial and political freedom and justice."

Labor's feeling against the use of the injunction has certainly not abated since 1915. Nor has its bitterness been appeased by its own occasional resort to the injunction. Labor has employed the injunction as a weapon in internecine conflicts and has invoked it against employers to enforce collective bargaining agreements, to restrain the operation of black lists or to insure some forms of statutory protection. The most significant instance of use of the injunction by labor arose under the Railway Labor Act of 1926 and resulted in a decision by the Supreme Court highly favorable to the workers [*Texas & N. O. R. Co. v. Ry. Clerks*, 281 U. S. 548 (1930)]. On the whole, however, opportunities for such relief have heretofore been comparatively restricted and the gains achieved have not outweighed the detriments. Moreover the circumstances to which the injunction applies when invoked by labor do not lend themselves to the procedural abuses that have developed as the normal concomitants of the injunctive process against labor. It is not surprising therefore that according to the American Federation of Labor the use of the injunction by labor is "a snare and a delusion."

The pressure of labor for its own immediate interests has combined with the desires for reform of those who are concerned over the weakened prestige of the judiciary, particularly of the federal judiciary, and the undermined confidence in even handed administration of the law. From the turn of the century there have been manifold attempts at corrective legislation. In their earlier form they were directed against a modification of the ancient doctrines of conspiracy and restraint of trade as applied to contemporary labor conflicts and later on to the outlawry of agreements by workers not to join or remain members of a union—the so-called yellow dog contracts. Corrective measures did in fact reach the statute books but were in the main nullified by judicial construction. Reform then addressed itself to the procedural aspects of equity jurisdiction in labor cases, ranging from an outright withdrawal of the injunction in labor controversies to the formulation of restricted details in granting such

injunction. Here again the courts largely erased what the legislatures wrote. Thus a California statute of 1903 which specifically forbade the issuance of an injunction was construed by the California state court to have effected no change in the law. A similar statute enacted in Massachusetts in 1914 was found by its Supreme Judicial Court to be a denial of due process of law and of the equal protection of the law and so unconstitutional. On the other hand, Arizona sustained such a statute, although it finally foundered in the United States Supreme Court. Since this decision [*Truax v. Corrigan*, 257 U. S. 312 (1921)] was based on the Fourteenth Amendment it has had far reaching effect upon the movement for dealing with the labor injunction. By the Clayton Act Congress in 1914 seemed to confine the activities of the federal courts in the issuance of labor injunctions to such narrow limits that Samuel Gompers hailed the Clayton Act as labor's magna carta. But the Supreme Court construed the ambiguous language of the Clayton Act to be "merely declaratory of what is the best practice always" [*Amer. Steel Foundries v. Tri-City Council*, 257 U. S. 184, 203 (1921)] and not as remedying drastically the evils which gave rise to the Clayton Act. In effect therefore the decisions of the Supreme Court and the actions of the lower federal courts have so confined the Clayton Act as to leave substantially intact—in some respects even to enlarge—the grievances against the labor injunction which led to the Clayton Act.

The Supreme Court was more hospitable to another important provision of the Clayton Act—that granting right to trial by jury in certain cases of contempt for violation of an injunction—holding it not to be "an invasion of the power of the courts as intended by the Constitution" [*Michelson v. United States*, 266 U. S. 42 (1924)]. This decision was the more significant in that several state courts, interpreting the doctrine of separation of powers as a narrow, mechanical rule of law rather than as a maxim of political wisdom, had invalidated similar state legislation. But in practise this provision of the Clayton Act was narrowly applied.

The labor troubles in the coal, rail and steel industries in the period following the World War, coming at a time of general conservatism and "Red" phobia, led to a series of injunctions, some of which made the Debs decree look mild. These excesses in turn stimulated a new effort for corrective legislation. Some states, like Illinois and New Jersey, enacted analogues of the

Clayton Act, which local courts, following the decision of the Supreme Court upon the Clayton Act, severely limited by construction. A number of states limited—and New York and Wisconsin abolished—the issuance of *ex parte* orders. In 1928 the Judiciary Committee of the United States Senate proposed a detailed revision of equity practise in labor litigation which sought to withdraw the aid of the federal courts from the enforcement of anti-union agreements, to correct procedural abuses, define and confine discretionary jurisdiction and to extend the right of jury trial for contempt. This proposal became law upon March 23, 1932, when President Hoover signed a bill embodying it (Public no. 65, 72nd Cong., 1st sess., 1932).

In 1931 sixteen state legislatures had before them counterparts of the pending federal measure. One state, Wisconsin, enacted them into law; another state, Pennsylvania, enacted all but the provision invalidating anti-union agreement; and four states, Arizona, Colorado, Ohio and Oregon, followed the earlier lead of Wisconsin in invalidating anti-union agreements.

FELIX FRANKFURTER  
NATHAN GREENE

See: INJUNCTION; CONTEMPT OF COURT; TRADE UNIONS; LABOR DISPUTES; STRIKES AND LOCKOUTS; JURY; WRITS, LEGAL.

Consult: Frankfurter, Felix, and Greene, Nathan, *The Labor Injunction* (New York 1930); Brissenden, P. F., and Swayzee, C. D., "The Use of the Injunction in the New York Needle Trades" in *Political Science Quarterly*, vol. xlv (1929) 548-68 and vol. xlv (1930) 87-111; Witte, E. E., "Social Consequences of Injunctions in Labor Disputes" in *Illinois Law Review*, vol. xxiv (1930) 772-85, and "Labor's Resort to Injunctions" in *Yale Law Journal*, vol. xxxix (1929-30) 374-87; Frankfurter, Felix, and Greene, Nathan, "Congressional Power over the Labor Injunction" in *Columbia Law Review*, vol. xxxi (1931) 385-415; McCracken, Duane, *Strike Injunctions in the New South* (Chapel Hill, N. C. 1931); Witte, E. E., *Government in Labor Disputes* (New York 1932). For a collection of source materials, see Sayre, F. B., *A Selection of Cases and Other Authorities on Labor Law* (Cambridge, Mass. 1922).

Testimony taken in the course of congressional

hearings is valuable. The references to 1914 are collected by Justice Brandeis in his dissenting opinion in *Truax v. Corrigan*, 257 U. S. 312, 354, 369-70 (1921). The latest extensive hearings are United States, Congress, Senate, Committee on the Judiciary, 70th Cong., 1st sess., *Limiting Scope of Injunctions in Labor Disputes*, 4 pts. (1928).

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State court cases: *Bossert v. Dhuy*, 221 N. Y. 342-66 (1917); *Auburn Draying Co. v. Wardell*, 227 N. Y. 1-12 (1919); *Exchange Bakery Restaurant, Inc. v. Rifkin*, 245 N. Y. 260-72 (1927); *Interborough Rapid Transit Co. v. Lavin*, 247 N. Y. 65-83 (1928); *Nann v. Raimist*, 255 N. Y. 307-19 (1931); *Vegelahn v. Guntner*, 167 Mass. 92-109 (1896); *Plant v. Woods*, 176 Mass. 492-505 (1900); *A. T. Stearns Lumber Co. v. Howlett*, 260 Mass. 45-74 (1927); *Pierce v. Stablemen's Union*, 156 Calif. 70-81 (1909); *Barnes v. Chicago Typographical Union*, 232 Ill. 424-40 (1908); *Clavage v. Lufhringer*, 202 Mich. 612-15 (1918); *Greenfield v. Central Labor Council*, 104 Oregon 236-81 (1922); *Keuffel & Esser v. Inter. Asso. Machinists*, 93 N. J. Eq. 429-46 (1922); *Forstmann et al. Co. v. United etc. Workers*, 99 N. J. Eq. 230-37 (1926); *Gevas v. Greek Restaurant Workers' Club*, 99 N. J. Eq. 770-87 (1926); *Jefferson & I. Coal Co. v. Marks, et al.*, 287 Pa. 171-84 (1926); *Kraemer Hosiery Co. v. American Federation of Full Fashioned Hosiery Workers*, 157 Atl. 588 (Pa. 1931).

## LABOR LEGISLATION AND LAW

LABOR LEGISLATION .....	EDWIN E. WITTE
LABOR LAW .....	
<i>Anglo-American</i> .....	ROBERT L. HALE
<i>Continental</i> .....	WILLIAM SEAGLE

LABOR LEGISLATION. No attempt to define the term labor legislation has been made either in the leading work on the subject in the English

language or in the principal collection of American labor laws. Where definitions have been attempted emphasis has generally been placed

upon the protective or regulatory aspects. From the former aspect labor legislation is concerned with "raising the lot of the working classes," from the latter with "exceptions to general rules of freedom of contract." As a statement of the general character and purposes of labor legislation, however, neither concept is wholly adequate, nor are both combined.

Although labor legislation is a form of social legislation and of social and political reform, many important distinctions are involved. Labor legislation considers the worker as such; social legislation and reform treat him primarily as a citizen. Some reforms affect workers directly and some only indirectly, while others may not affect them at all. Labor legislation is moreover not a revolutionary change; it modifies industrial autocracy but affects the capitalist system only in minor respects. It is supplemental to employees' solutions, like trade unionism and collective bargaining, and to employers' solutions, like welfare plans, and is an alternative to such fundamental changes as socialism, communism or Fascism. Social legislation is a narrower concept than social and political reform but broader than labor legislation. Labor legislation whether in the form of statutes, administrative orders or judicial decisions is specifically concerned with regulating conditions of labor and relations between employers and employees. Social legislation includes also such fields as poor relief, public education and housing, only minor features of which can be included within the concept of labor legislation. Social insurance is in general labor legislation, although in some cases it may include non-workers and not regulate industrial relations. Labor legislation originated in humanitarian legislation but has become at once narrower and broader—part of a governmental program for the regulation of industry. Here it merges into social legislation and social and political reform—the general movement to improve and alter social relations; and hence the reciprocal influences are many and important.

Modern labor legislation is generally said to date from the English Health and Morals of Apprentices Act of 1802, but there were many earlier statutes regulating the relations between masters and servants, as in the case of the Statute of Labourers and the many Elizabethan laws concerning working conditions and wages. Contrary to the impression left by some accounts, there was never a sharp break between the old master and servant relation and the modern

employment contract; and many of the early English laws and decisions have exerted a profound influence on the law of employment relations to this day. What really made the act of 1802 notable was not its break with the past but the advent of humanitarian motives in labor legislation; this act, with most of the early labor legislation after the industrial revolution, was inspired by the misery of the working classes, enacted before workmen had the right to vote and trade unions exerted any important influence in the national life, and merely served to protect the weakest workers. Following the pioneer act of 1802, which limited to twelve hours daily the labor of children in cotton mills, England passed a series of factory acts; the first in 1819 further restricted the employment of children. In 1833 special enforcement officers known as factory inspectors were appointed. In the next decade was enacted the first labor law for women, the twelve-hour law of 1844 and in the same year the first law for the safeguarding of machinery, followed a little later by laws regulating dangerous trades and homework. The right to form unions had been legally recognized in 1824-25. Six years later the first Truck Act was passed compelling payment of wages in kind and in full, and in 1862 a preferential wage payments act similar to the American mechanics' lien. The factory acts of 1864 and 1867 broadened the area of factory legislation to include practically all industrial occupations. By this time labor legislation had ceased merely to protect the weakest workers and was coming to cover many of the most important aspects of the relations between employers and employees. This was emphasized by acts passed in 1871, 1876 and 1893, which strengthened the legal status of trade unions; by an act in 1875 to regulate strikes, which provided that a combination to carry on a strike shall not be indictable as a conspiracy unless the acts involved would be criminal if committed by an individual; and by a Conciliation Act in 1896 to settle industrial disputes. The Factory and Workshop Act of 1901 consolidated and improved all the existing factory acts; it strengthened the enforcement machinery and included legislation applying to buildings in construction, laundries and docks. The Trades Disputes Act of 1906 freed trade unions from all liability for torts and swept away the last vestige of the common law doctrine of conspiracy in its application to labor disputes. The advocacy of the trade unions and of the Labour party was a strong factor in

the passage of this act as well as of all subsequent labor legislation. The Coal Mines Regulation Act of 1908, which introduced the eight-hour day, was the first definite regulation by statute of the hours of labor of adult workers. Meanwhile a new development had begun with the Workmen's Compensation Act of 1897, followed in 1909 to 1911 by legislation for employment exchanges, trades boards, minimum wages, health insurance, old age pensions and unemployment insurance. At the same time labor legislation came to assume more and more of a non-parliamentary character because of the enormous increase of administrative enactments regulating industrial relations.

Although it developed much later and on a modified scale labor legislation in continental Europe followed the English pattern. Prussia in 1839 enacted a Children's Protective Act; thirty years later the North German Confederation adopted an industrial code, subsequently incorporated in the legal system of the German Empire, which regulated the labor of women and children. This merely protective legislation affecting the weakest workers was followed in the 1880's by the pioneer introduction of social insurance covering accidents, sickness and old age. At the same time other laws were enacted for the purpose of preventing workers from organizing economically and politically. The scope of more specific labor legislation was extended in 1891 by the Workers' Protection Act, which decreed Sunday rest, safety regulations, a minimum working day and abolition of night work for women and children. Labor legislation now placed increasing emphasis upon adult males; it was moreover supplemented by repeal of the antisocialist laws and by laws legalizing trade unions, regulating collective agreements and strikes and instituting a system of courts for the settlement of industrial disputes. From this time forward the trade unions and the Social Democratic party were important factors in the enactment of labor legislation.

In France the first labor legislation properly so-called was the act of 1841 limiting the working hours of children to eight hours for those eight to twelve years old and to twelve hours for those twelve to sixteen years old; no enforcement machinery was provided, however, and the law was practically a dead letter, as was the general twelve-hour day law enacted in 1848. Until this time such meager labor legislation as had been enacted aimed primarily at suppression of workers' rights; as, for example, the

law of 1791 prohibiting combinations of workers. A factory inspection law was not enacted until 1883. In 1864 the restrictions on the formation of labor organizations were modified; twenty years later trade unions were legalized, and legislation was enacted providing an opportunity for the settlement of industrial disputes without strikes. A workmen's compensation law covering factory workers only was passed in 1898; subsequent legislation awarded compensation to other categories of employees. A substantial legislation gradually developed regulating labor relations in industry but it was mainly concerned with the weakest workers, although public opinion manifested an increasingly strong demand for more comprehensive labor laws and social insurance.

By 1914 the north European countries had labor legislation comparable in scope to the English and the German as well as social insurance systems covering all major industrial hazards except unemployment. Russia and the Balkans lagged considerably behind, with Italy and Spain occupying a middle ground. To a much greater extent than in England and the United States labor legislation in continental Europe was embodied in administrative orders rather than in statutes—perhaps one of the more important reasons why such legislation was considered paternalistic by Americans.

Before the World War labor legislation reached its highest development in Australia and New Zealand, which in the 1890's enacted the first general eight-hour laws, minimum wage laws and compulsory arbitration laws. These Australasian states early abandoned the merely protective principle and promulgated laws covering all groups of workers and all phases of industrial relations. The minimum wage laws set up machinery for fixing minimum wages and indicating the trades in which they were to be fixed and included workers other than women and children. Compulsory arbitration regulates the relations between employers and employees by means of special boards or courts, which in practise, however, have not rendered decisions until all efforts at conciliation have failed. Strikes have decreased but have not altogether disappeared. In 1904 an Australian federal law set up a court for conciliation and arbitration and made strikes or lockouts an offense if the dispute extended beyond the limits of a state. The Canadian Industrial Disputes Act provides a method of dealing with industrial disputes midway between the Australasian system of

compulsory arbitration and the English policy of governmental non-interference except to preserve law and order or to effect a settlement.

In the United States labor legislation developed somewhat later than in England but earlier than in most continental European countries. The earliest American labor laws were the mechanics' lien and wage exemption laws of the 1830's and 1840's. Massachusetts, the most industrialized of the American states, was the pioneer in labor legislation through the nineteenth century and blazed the trail by the enactment in 1836 of a statute providing schooling for employed children; six years later it passed a ten-hour law for children under twelve years of age. By 1853 six other states had similar laws regulating the working time of children. Three states (including highly industrialized Rhode Island) passed laws limiting the working time of women to ten hours, but they were ineffective because of the provision that the laws were operative only in case of the absence of a contract to the contrary. Massachusetts was the first state to enact (1874) an effective ten-hour law for women; and the state was also the first to employ factory inspectors (1867), to establish a state labor department (1869) and to pass an industrial safety law (1877). Other industrial states lagged about ten years behind Massachusetts; many non-industrial states still have few labor laws. Not until the 1880's was there a considerable volume of labor laws in the United States, but ever since it has grown rapidly, with its greatest development in the 1880's and early 1890's and from 1910 to 1915. American labor legislation, however, lagged behind the more progressive European and Australasian countries.

Before the World War labor legislation was still in its initial stage. It was hampered by low minimum requirements in the fields which were covered by legislation and by the absence of legislation in other fields. The administration of labor laws moreover was generally inadequate, although less so in Germany, England and Australasia than in the United States and other countries. The significance of administration is extremely great not only from the standpoint of enforcement but also because so much labor legislation consists of the enactments of administrative bodies. Both the scope and quality of labor legislation and administration were enormously improved in the European, Asiatic and Latin American countries during the war and post-war periods. War requirements

led to legislation on behalf of the workers in all the belligerent countries, such as the eight-hour railroad labor law enacted by the American Congress, while in the post-war period labor legislation was stimulated by the radical mood and increasing strength of labor in Europe and by the acceleration of industrialization in Latin America and Asia; a contributing factor was the inclusion for the first time in history of labor clauses in the peace treaty, which provided for an International Labor Office and international labor conferences to consist of the representatives of governments, employers and workers.

England during the war promulgated considerable labor legislation in the form of a series of munitions acts under which minimum wage rates were established and for the time something akin to compulsory arbitration was instituted for a large part of British industry; workmen's compensation acts which increased benefits in an attempt to offset depreciation of the currency; and an act to strengthen the powers of the trade boards set up in 1909 to regulate wages. After the war labor legislation increased greatly. Minimum wage legislation was again broadened and in 1924 agricultural wages boards and agricultural wages committees were provided to fix minimum wages for agricultural workers. A series of acts further regulated labor conditions in mining; one act provided a fund for "social improvement." Another series of acts made minor changes in the workmen's compensation laws by strengthening the administrative machinery and extending the compensation to include salaried employees; but the labor group is very much dissatisfied with the law and has urged extensive changes. The scope of social insurance was made more inclusive. Unemployment insurance was extended to practically all industries in 1920 and in 1929 the Industrial Diseases Compensation Act consolidated the existing laws and listed twenty-eight compensable diseases. In 1921 the British Railways Act set up a Railway Wages Board, but its decisions were not mandatory. This non-compulsory feature also characterized the permanent machinery for arbitration of industrial disputes set up by the Industrial Courts Act of 1919 and the "parliamentary self-government" of the Whitley industrial councils for cooperation between employers and employees. The development of labor legislation parallels increasing state intervention in industry as a whole; as, for example, the government machinery for the unification and development of the electric power industry.

French labor legislation is mainly a product of the post-war period. The war legislation, including minimum wage laws, was merely a prelude to larger developments. In 1919 under pressure of popular demand and despite the opposition of employers the government adopted the principle of the eight-hour working day without reduction of wages. In the same year a law was enacted providing compensation for certain industrial diseases. During the succeeding years the eight-hour law was introduced by administrative decrees to cover nearly all employees, who were given joint representation with the employers in the administrative machinery to enforce the law as well as in that to fix minimum wages. In addition to enactments extending the scope of legislation on industrial diseases an improved workmen's compensation law was enacted in 1925, in the passage of which trade union agitation was an important factor. In general the most significant factor in the development of labor legislation in post-war France was the real activity of the reformist *Confédération Générale du Travail*, which separated itself from the communist unions, abandoned the pre-war syndicalist distrust of the state and legislation and developed a program for the enactment of comprehensive labor laws. The reformist unions moreover are represented on many consultative organs set up by the state to advise on problems of labor and social legislation. The culmination of these developments was the Social Insurance Law of 1928, subsequently modified because of violent opposition by the employers. At the same time machinery has been set up by law in many industries regulating collective bargaining. Simultaneously state intervention in industry has grown greatly, as evidenced in the attempts at national economic planning.

The greatest development of labor legislation in the post-war period took place in Germany. The revolution in 1918 brought an eight-hour law. In the following year the Weimar constitution laid the basis for a comprehensive unified development of labor legislation in the following constitutional provisions: "The organization of economic life shall be based on principles of justice, with the aim of assuring to all the conditions worthy of a human being. . . . Labor is under the special protection of the federal authorities. . . . Manual and non-manual workers shall be called upon to cooperate with employers on an equal footing in the regulation of wages and labor conditions." Out of the

latter provisions grew the Works Councils as the basis of labor-capital cooperation, but which were gradually reduced to practical insignificance by the action of employers. A series of new labor laws was enacted to meet new conditions and the growing strength and demands of the workers. They regulated industrial safety, giving the Ministry of Labor extensive powers to define requirements for specified undertakings; hours of labor, based on acceptance of the eight-hour day, including regulation of overtime and increased protection for women and children; and introduced more effective labor inspection and enforcement machinery, with broader powers delegated to the federal government. There are also provisions institutionalizing collective bargaining, courts for the compulsory settlement of industrial disputes, legal recognition and regulation of collective agreements and the regulation of wages. Social insurance covers all hazards that affect the workers. German labor legislation is now probably the most highly developed in the world; it best represents, moreover, the tendency of such legislation to become part of a coordinated program of government regulation of industry.

In most of the other European countries also the post-war period witnessed a great development of labor legislation. Austria followed the German pattern, including the eight-hour day and works councils. Czechoslovakia has a series of labor laws, including social insurance, of the most progressive character, although they are scattered and not yet unified in a comprehensive labor code. Since the establishment of the republic Spain has enacted a series of labor laws modeled on the legislation of the most advanced countries. Hungary is still extremely backward in its labor legislation, which is mainly of an elementary protective character; scarcely any new labor laws have been enacted in recent years. Poland is also backward, although it has an eight-hour law, limited unemployment insurance and a measure of regulation of collective bargaining. In Italy the Fascist regime has introduced some additions to labor legislation; its main contribution has been a new system of administration, the prohibition of strikes and strict governmental supervision of the trade unions. Great progress in labor legislation has been made in Soviet Russia, where the trade unions participate directly and actively in the enactment and administration of labor laws.

Of the non-European countries other than



the United States the most important development of labor legislation has taken place in Japan, China and Latin America. Japan's pre-war labor laws were wholly inadequate, consisting of a factory law and a mining law which served to protect only the weakest workers, and which were poorly enforced. Since 1919, however, legislation has been enacted with regard to employment exchanges, health insurance (accidents and diseases) and conditions of labor in factories, including a minimum working age of fourteen, and maternity protection. In 1924 legislation was enacted providing for arbitration of industrial disputes, compulsory or optional according to circumstance. China in recent years has adopted labor laws of the most progressive character, but they are not enforced. The standard of labor laws in other Asiatic countries is low. Canada's legislation, which developed almost wholly after 1900 and has been improved since the World War, includes safety regulations, unemployment exchanges, workmen's compensation, minimum wages for women and conciliation of industrial disputes, national and provincial. Canadian labor legislation has been influenced strongly by that of the United States and compares favorably with that of the advanced American states. In Latin America labor legislation is mainly the product of the past twenty years. It is based on the European model and includes all phases of labor legislation, although not all in the same countries. Mexico has a series of comprehensive labor laws, which are, however, inadequately enforced. Some of the Latin American countries, such as Argentina, Chile and Uruguay, have labor laws which compare favorably with those of European countries. Most of them have ratified the conventions adopted at the international conferences of the International Labor Office, including the eight-hour day. There is considerable protective wage legislation (including the dismissal wage) and protection of women and children. Unions are generally recognized as legal, but little legislation on collective bargaining has been enacted.

In the United States there was little development of new types of labor legislation in the post-war period, although existing labor laws were strengthened and their administration materially improved. In this period labor legislation was retarded by unusual prosperity, increased opposition on the part of employers, the suspicions of a large element in the trade unions and the critical attitude of a majority of the United States

Supreme Court toward all extension of governmental control over industry. Since 1929 depression has made the American public much more sympathetic with labor legislation and the attitude of the Supreme Court has been more liberal. The volume of labor laws enacted in 1931 was probably greater than in any other year of American history.

After the mechanics' lien and wage exemption laws the first important labor laws in most of the American states were those restricting child labor. These at first set very low standards; ten-year age limits and maximum eleven or twelve-hour workdays in factories with no restrictions on the employment of children in other industries. More adequate child labor laws date from the 1880's. By 1900 practically every state had some legislation on the subject. A strong impetus to higher standards was given by the passage of the two federal child labor laws of 1916 and 1919, both of which were held unconstitutional, and the submission of a proposed child labor amendment to the Constitution of the United States in 1924, which failed of adoption. Coordination of child labor with compulsory school attendance laws began quite early and part time education for employed children was introduced by the Wisconsin pioneer law of 1911 and the passage of the Smith-Lever Act by Congress in 1916. Today child labor legislation in the United States is still spotty but distinctly in advance of that of any other country.

Legislation regulating hours was first enacted after the Civil War, although there was agitation much earlier. The first laws were applicable to all employees, but they applied only when there were no provisions to the contrary in existing employment contracts. Compulsory laws have been confined to women and to public and quasi-public employees and to industries presenting peculiar health or public safety hazards. This development has been due largely to decisions holding restrictions on the hours of labor of adult male employees to be unconstitutional in the absence of peculiar hazards. In this respect legislation in the United States is far less advanced or extensive than in Europe and differs further from European laws in that it generally prescribes absolute limitations, while the continental (but not the English) laws establish only a standard of hours which may be set aside in emergencies upon payment of an increased wage for overtime.

American wage legislation is still more limited, although some types were among the

earliest of labor laws, and has been regarded askance by the courts even more than legislation of hours. Laws dealing with incidental features of the wage contract, such as time and manner of payment; laws giving preference and special protection to wages due workmen, whether they appear as creditors or as debtors; laws extending governmental assistance in the collection of wage claims; and laws prescribing the wages to be paid by contractors engaged in public works are generally regarded as unconstitutional. Attempts to regulate wage rates paid adult employees in private employments have, however, been discouraged by the courts. In the second decade of the present century more than a dozen states and also the national Congress for the District of Columbia enacted minimum wage laws applicable to women and minor employees, but the District of Columbia act was held unconstitutional in 1923 by the United States Supreme Court. While some of these laws are still being enforced they have only precarious authority except as to minor employees and all further development of minimum wage legislation has been checked, although there is still some hope that a constitutional basis may be found for laws establishing minimum rates to be paid adult employees.

Safety legislation did not appear except in Massachusetts until the 1880's, but in a very short time it exceeded in volume every other type of labor legislation. Until 1911 all safety legislation was embodied in statutes describing in detail what machinery was to be guarded and sometimes how this was to be done; but since that year statutes have laid down the general standard that employers must provide safe employment, while the labor department is delegated to make detailed administrative regulations as to what guards and other protective methods are deemed safe. The bulk of industrial safety laws in the United States is now to be found in administrative orders; safety legislation is much more extensive than in European countries but not nearly so thoroughly enforced. Legislation relating to sanitation and health hazards in industry is, however, far less extensive in this country than in Europe. Very few processes and substances are subject to special regulation, while in Europe there are numerous prohibitions.

The United States is also far behind Europe in public employment exchanges. Despite the fact that the first public employment office was established as long ago as 1890 (in Ohio) and

notwithstanding the great interest during each depression period in a more efficient employment service there were in 1932 fewer than 250 free public employment offices, while there were at least 3000 fee charging private employment agencies. Some of the existing public offices are conducted by the federal government, but the majority are under state or city control and only loosely federated with the United States Employment Service. During the depression following 1929 larger federal appropriations have once more made expansion possible, but this has apparently been more competitive than cooperative with the states. Private employment agencies are subject to regulation in most states, but the United States Supreme Court has held that they cannot be prohibited and that the states cannot prescribe the maximum fees they may charge. Judging by the large number of complaints, regulation in most states is far from effective but is gradually becoming more strict.

The United States is deficient also in social insurance legislation, although more attention is now given to workmen's compensation than to any other type of labor legislation. The first workmen's compensation laws held constitutional were enacted in 1911, and within the next four years the great majority of the states passed such acts. Today all but four states have compensation laws, and no other type of labor legislation has so generally met the approval of American public opinion. These compensation laws resemble much more closely the English workmen's compensation acts than the continental European accident insurance laws. With one exception they require no contributions from employees and the liability is imposed on the individual employer rather than on social insurance funds. Unlike the English acts most of the American laws require employers to insure their liabilities and to set up special tribunals for their administration. The American compensation laws do not cover all employees. The entire group of railroad employees concerned with the actual movement of trains, practically all agricultural and domestic employees, all employees in small establishments and varying groups of other employees must still in cases of accident look for recovery to the common law as modified by employers' liability laws. These laws, many of which antedated workmen's compensation, are distinctly favorable to recovery but do not escape the necessity of establishing negligence on the part of the employer before the injured employee has any claim.

After workmen's compensation had spread through the United States it was expected for a time that health, old age and invalidity insurance would follow, as in the case of accident insurance in Europe. No state, however, has ever enacted a health insurance law and the question has received little attention since the World War. Fourteen of the workmen's compensation laws have been amended to include at least some occupational diseases, but this is by no means a substitute for health insurance. Since 1923 old age pension laws have been enacted in fifteen states, but unlike the European laws they are non-contributory and are not limited to workers in industry. No state adopted any unemployment legislation until 1932 and the Wisconsin unemployment reserves act (effective July 1, 1933) contemplates individual plant reserves rather than a central insurance fund as in the English and European systems.

The law governing collective bargaining, labor organizations and labor disputes is in the United States almost entirely a matter of judicial decisions rather than of statutes. The majority of the statutes in this field have had for their object relieving labor from restraints imposed through court decisions but have been so construed that they have had little practical significance. Statutes extending favors or protection to labor organizations, except laws to prevent infringement of union labels, have been held unconstitutional, and some general laws not originally considered to have had any application to labor disputes, such as the federal antitrust acts, have been interpreted to impose additional restrictions. This by no means exhausts all of the American labor legislation. There is a considerable volume of special legislation for public employees and the employees of public service companies, particularly the railroad workers. Very important to the trade unions are the immigration and convict labor laws. Similarly, licensing laws for trades, apprenticeship laws, building and fire prevention codes, adult and vocational education and vocational rehabilitation all have important labor aspects.

Labor legislation in the United States has developed piecemeal and as a remedy for specific evils. Each proposal has had a somewhat different group of proponents and opponents. The strongest support for labor legislation has come from the trade unions; liberal political, civic and church groups; progressive, pioneering employers; social workers; labor departments; and stu-

dents of labor problems. It has been opposed most commonly by employers' associations and on social insurance measures by the casualty insurance companies and the medical associations. In recent years the feminist group known as the Woman's party has fought against all special labor legislation for women. Every type of labor legislation before its enactment has had the support of some progressive employers, and nearly all labor laws have after enactment been accepted by the great body of employers. Neutral groups not directly identified with industry have often been the arbiters between the trade unions and the employers' associations in contests over labor legislation. Jealousy of the farmers and distrust of the trade unions by the middle class have retarded progress, but the organized farmers have generally supported labor legislation favored by the unions.

After enactment nearly all American labor legislation has been challenged in the courts. Most labor legislation restricts the right of contract and consequently is attacked as a denial of liberty and a seizure of property without due process of law. In defense the police power of the state is invoked—the right to restrict freedom of contract in the interests of the general welfare. The question of constitutionality in the final analysis depends upon whether the courts see a relationship between the challenged law and the general welfare. Great weight attaches to precedents, but really decisive is the view of the state and federal supreme courts of the reasonableness of the legislation.

A further ground for attack on some labor laws arises out of our federal system of government. Attempts of the national government to regulate labor conditions, particularly child labor and workmen's compensation, are challenged as an invasion of the rights of the states; and some state legislation has been held to amount to an interference with interstate commerce. The regulation of labor conditions is mainly within control of the states; but railroad and maritime employments present many problems in which the dividing line between the state and federal jurisdictions is shadowy, and many a labor law has been annulled because it overstepped this indistinct line. For this reason and because of the further consideration that labor regulations should be uniform throughout the country in order not to handicap some employers many advocates of labor legislation have favored extension of federal jurisdiction. The great outcry over states' rights which followed the submis-

sion of the federal child labor amendment, however, showed that such extension is not yet within the range of practical politics.

The list of labor laws which for one reason or another have been held unconstitutional is a long one, but the list of those which have been sustained is much longer. The courts have been inhospitable to laws favoring organized labor and to minimum wage laws for adult women employees, have viewed with suspicion other attempts at wage regulation and all legislation of hours for men and have greatly weakened the regulation of private employment agencies. They have, however, sustained the great mass of labor legislation and in a number of fields have reversed earlier adverse decisions. No important labor law once enacted and sustained by the courts has ever been repealed.

Despite its piecemeal character and uneven development in different countries labor legislation tends to follow a definite pattern. The fundamental influence involved is the change in the relations between employers and employees produced by the development of industrialism. This new order in its struggle against feudal restrictions emphasized the economic individualism of *laissez faire* and limited the state's intervention in industry. But economic individualism itself forced such state intervention. The state was early compelled to enact laws regulating competition, commerce, transportation, banking and corporations. Where state aid might facilitate any particular economic development, as in the building of railroads in the United States, it was secured regardless of the theoretical assumptions of *laissez faire*. Simultaneously economic competition and the increasing use of machinery led to the growth of large scale industry and eventually of monopolistic combinations severely limiting economic individualism and forcing legislative regulation. Employers moreover organized into associations to further their mutual interests. Similarly workers organized into their own associations, the trade unions. The pressure of these developments obliterated the pattern of individual liberty, economic individualism and freedom of contract. The state was forced to intervene to develop a program for the regulation of an increasingly collectivist industry, and labor legislation was an integral part of that program.

But while the theoretical assumptions of *laissez faire* were profoundly modified in practice by the growing integration and complexity of industry and by state intervention, the prin-

ciples and ideology of individualism persisted beyond their historical necessity. Thus the development of labor legislation assumed the form of a conflict between the claims of individualism—"individual liberty" and "freedom of contract"—and the needs of the workers in an increasingly collectivist economic order. The abandonment of "personal liberty" which was involved in legislation regulating the employment of child labor was accepted on the theory that children were not free agents, but similar legislation for adult female workers was opposed on the ground that the state should not interfere with the "rights" of free women. At every stage opposition to new legislation was particularly strong in the United States, where the principles of individualism had been incorporated into constitutions which were later invoked to declare labor laws unconstitutional.

Behind the struggle of "principles," however, was the clash of antagonistic class interests. The employers accepted state intervention where it aided the growth of industry or assumed the form of labor legislation directed against the workers, such as the English legislation of 1800 which made it a criminal offense for workers to combine and strike and the American judicial decisions on "criminal conspiracy"; but they usually opposed vigorously the enactment of legislation in behalf of the workers. The workers, on the contrary, pressed for labor legislation—for protective laws and for laws granting the right to organize, to bargain collectively and to strike. Labor legislation emerged out of the struggle between labor and capital and bore the scars of that struggle; throughout the state acted mainly but not entirely as holder of the balance of power. On the whole, labor legislation developed most fully where the economic and political organizations of labor were strongest, as in England and Germany, although humanitarianism in the one country and state paternalism in the other were originally important factors. In France before the World War the labor movement under syndicalist influence was antagonistic to labor legislation and hampered its development. In the United States, while trade unions have been the most important factor in the passage of labor laws, American unions have characteristically stressed direct control of working conditions, while the European unions have generally stressed legislation. In general the minimum conditions provided by labor legislation in the United States seldom went beyond the gains already

secured by trade union action, but legislation spread the gains among unorganized workers.

The growth of trade unionism influenced labor legislation in two ways: by the enactment of protective laws and by the enactment of laws regulating bargaining between employers and employees. No such regulation was necessary (except negatively in the form of repressive measures) where the assumption prevailed of an equality of right between the employer and the employee, since this made bargaining a personal relation in which the power of the employer arbitrarily decided the issue. But where the workers organized and insisted on collective action and strikes, the state was forced to intervene and define the "rights" involved. This intervention resulted eventually in legislation making unions and strikes lawful, although the state may still impose various forms of limitations upon both, ranging from the invocation of "law and order" to the institution of compulsory arbitration. Collective agreements moreover led to legislation defining the status of these agreements; in Germany and elsewhere in Europe, for example, employers and employees are prohibited from making individual contracts in violation of the minimum conditions specified in the collective agreements.

Although labor legislation in its later and larger aspects was mainly the result of increasing labor strength, organization and action, there were many significant contributing factors. The original humanitarian motive merged with the general reform movement and with the belief that the evils of unrestrained industrialism were too great for charity, that the public was seriously affected by strikes and that employers should not be permitted to burden the community with the costs of both. Out of this emerged the concept of community welfare and standards, and arguments were advanced that labor legislation raised the level of social life by improving modes of living, education and culture. The ideology of social reform through labor legislation acquired considerable independent influence, operating mainly through democratic and pressure politics and professional reform groups advocating labor legislation. Certain employers moreover came to support specific labor legislation to compel uniform standards and to equalize competitive conditions, strengthened by the conviction that better working conditions whether granted voluntarily or imposed by legislation tended to increase efficiency and productivity. Much labor legis-

lation represents merely the compulsion of certain employers to adopt standards which a large part of the industry has already adopted; progressive employers are always ahead of legal requirements, and although they may favor self-government in industry they deem legislation to be necessary to bring laggards into line and deprive them of competitive advantages. Such motives were supplemented by the desire to assure peaceful relations between labor and capital. Finally, both labor and capital in newly industrialized countries were influenced in their attitude toward labor legislation by the experience of older countries.

The results of labor legislation have often disappointed the high hopes of its proponents yet have by no means been a negligible factor in labor's advancement. Labor legislation sets only minimum standards, which are generally far below those for which organized labor is contending. To organized workmen labor legislation has meant a slight raising of the level of the competition which they have to face from the unorganized and the improvement of incidental (although not unimportant) conditions of employment for which it is not practical to go on strike. To the unorganized workmen it has meant much more—securing a part of the advantages which the organized workmen win through their own efforts. To employers labor legislation has operated as a slight restriction upon their freedom to handle their labor problems as they see fit and as a small increase in costs to the advantage of competitors not similarly restricted, but it has not been without offsetting benefits. It has been an important factor in directing attention to personnel problems and has operated as a strong stimulus to the improved methods for dealing with these problems which were adopted so widely in the United States during the prosperity period of 1923-29. Moreover by removing entire issues from all controversy between employers and employees it has narrowed the field of conflict and promoted better relations.

One of the most important recent developments is the growth of international labor legislation, which the Labor Office of the League of Nations is actively promoting. The greatest obstacle encountered is the varying character of labor legislation in different countries; even when there are identical laws the provisions and benefits may vary to such an extent as to render them totally dissimilar on a comparative basis. In addition to the progressive and ideological

factors involved international labor legislation is most important economically from the standpoint of countries actively competing for foreign trade. The export industries are usually large scale with heavy fixed capital, and competitive changes in the export market tend to depress wages and labor conditions in the industries affected, a situation which might be prevented or modified by international labor legislation or agreements. The competitive drive itself, however, tends to prevent the adoption of the proposed measures of regulation and the higher labor standards involved.

The basis, scope and probable future development of labor legislation must depend upon a complex of economic and social factors. There are economic limits to labor legislation, determined by the efficiency of industry and the productivity of labor. But while labor legislation may not exceed these limits it usually falls short of them. Another factor is the power of the various social classes: while efficiency and output of industry are lower in Germany than in the United States, labor legislation is more highly developed in Germany because of the greater strength of organized labor. Both the economic and the class factor will determine the future of labor legislation; that future, despite forces to the contrary, will probably witness a further extension of labor legislation.

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**LABOR LAW.** *Anglo-American.* About the beginning of the nineteenth century English and American judges began to work out a body of legal doctrines for dealing with employment relations. The process was the familiar one of the common law, the rule enunciated in the decision of each case serving as a landmark for guidance in subsequent cases. In the course of the evolution of this body of labor law the judges in the several states of the United States have borrowed their precedents freely from other states and from England and the English judges have occasionally resorted to American precedents, although the doctrines are by no means uniform in all jurisdictions and the differences have been accentuated by legislation.

The employment situation after the coming in of the factories was radically different from what it had been before, and the common law and equity courts had not concerned themselves much with the older situation. The judges did not at first attempt to work out a body of law peculiar to employment but, so far as they were

not controlled by statutes, derived their precedents from general principles of English law supposed to be of universal applicability. The fundamental assumption was that employer and employee were free parties owing each other no legal duties except those which every person owes to every other or which each has voluntarily incurred by entering into a contract. In practice of course employees may be compelled to obey many requirements imposed by employers and employers may be constrained to observe restrictions imposed by labor unions; but such obedience on each side is not a matter of legal duty, unless it has been embodied in a contract, and the utilization of economic compulsion will not necessarily be regarded as a violation of the "equal freedom" of either party. Even when embodied in a contract enforcement may frequently be impracticable—too expensive for the employee, of no avail to the employer if the employee is incapable of paying a judgment for damages. The law cannot be regarded as settled as to whether collective agreements negotiated between a union and an association of employers are binding contracts at all or if so whether they confer rights and impose duties on the organizations as such or on the individual members of the two organizations.

In addition to contractual obligations incurred by the employer statutory duties have been imposed on him in regard to safe and sanitary factory conditions, workmen's compensation, methods of wage payment and in some cases hours of employment. To the extent that such matters are controlled by statutes they are removed from the province of free bargaining.

The bargaining process, at least before the growth of strong unions, as a rule gave the employer the upper hand. The theory was that each party had equal rights and duties and that superior economic position was due to superior service rendered to the community; the results were thought to conform to natural economic laws. The removal of many of the specific mercantilist restrictions on economic activity and of the feudal privileges of the aristocracy gave strength to this notion, flattering to the employing class and serviceable to them as an argument against labor legislation, which by improving the relative position of the workers seemed to disturb that equality before the law on which the economic inequalities were supposed to rest.

The premise of legal equality was in fact fallacious, for legal rights, privileges and duties

depend on property rights and these depend on the law. Each person has a legal duty not to infringe any other person's property rights, a privilege to use what he himself owns and a right to exclude everyone else therefrom except on his own terms. These statements, however, are empty abstractions until it is specified to what particular objects the property rights of each attach; when it is so specified, the specious equality disappears. A's duty not to infringe the property rights of others may circumscribe his legally permissible activity within very narrow bounds; his privilege to use his own property, if he owns practically nothing, may not suffice to permit him to eat or to produce food without obtaining another's consent; and his right to exclude others may serve no more than to protect the clothes on his back. B, on the other hand, despite his duty not to infringe the property rights of others may by virtue of his right (or that of the corporation in which he owns stock) to exclude others from very important property be able without effort to induce many others to pay him a generous income. The respective legal rights of A and B are equal only in the most formal and empty sense. Nor are they merely the reflection of inequalities in services rendered in the past on the basis of preexisting equal rights. Many of the inequalities are the outcome of the purely legal factor of inheritance of large estates on the one hand and on the other of legal exclusion from opportunity during childhood to acquire health and training in economic usefulness. The ultimate economic position of each person is not so rigidly predetermined at birth as in the feudal system, but the law still imposes vastly unequal handicaps.

As applied to the employment relation the dogma of equal freedom has taken the form of the assertion that "the right of the employee to quit the service of the employer, for whatever reason, is the same as the right of the employer, for whatever reason, to dispense with the services of such employee" [*Adair v. U. S.*, 208 U. S. 161 (1908)]. As a corollary each may prescribe the conditions upon which he will employ or accept employment. On this theory whatever compulsion is involved in the threat of withholding the job or withholding the services is legal and even if sufficient to bring the other party to terms the law will interpose no objection. Some limits, however, have been placed on this theory.

In the early nineteenth century, before the

doctrine of equal freedom had been firmly established, a combined threat to withdraw labor was looked upon askance. Such a combination might disturb the actual power of the employer to dictate the conditions of his plant. A combination of workers to refuse to work was made criminal in England by statute in 1800; in the United States a combination of workmen was held without the aid of legislation to be a criminal conspiracy in the case of the Philadelphia cordwainers, decided in the Mayor's Court in Philadelphia in 1806.

The doctrine of criminal conspiracy is now obsolete as applied to labor disputes. In England it was abolished piece by piece by statutes passed in 1824, 1825, 1871 and 1875. In the United States it received what was perhaps its death blow in the opinion rendered by Chief Justice Shaw of Massachusetts in 1842 in the celebrated case of *Commonwealth v. Hunt* (45 Mass. 111). In neither country today is a combined withdrawal of labor criminal; nor is it necessarily even actionable in a civil suit, although it may be.

But there are limits to the legally permissible use of economic pressure. To cut off the employer's "free flow" of labor or of customers by means of violence is an illegal method of inflicting economic loss upon him. Nor is actual violence essential to render the means illegal. Threats of violence would clearly suffice; and some courts have enjoined threats of social ostracism. In a few states picketing is prohibited altogether on the ground that it necessarily involves threatened violence. The restrictions on picketing differ from state to state, but a state statute denying the remedy of an injunction against abusive and noisy but non-violent picketing was held unconstitutional in *Truax v. Corrigan* [257 U. S. 312 (1921)]. In England peaceful picketing was legalized by the Trade Disputes Act of 1906, but the act of 1927 imposes criminal penalties for some forms of it at least. In the United States the supposed legalization of peaceful picketing (as far as federal law was concerned) in section 20 of the Clayton Act of 1914 has been given a very restricted interpretation, which the *Norris-La Guardia Act* of 1932 attempts to enlarge.

Even when there is nothing illegal in the means, a strike is not necessarily lawful. Like most bargaining pressure it is aimed to compel a reluctant employer to forego the exercise of what may loosely be termed a "right." When so viewed, it is easy to jump to the conclusion that

the strike violates his right and is therefore unlawful. Much confusion results from a vague use of the term right, which the adoption of Hohfeld's careful terminology would avoid. Under this terminology it cannot be premised that the employer has a legal right to pay low wages or operate long hours or on a non-union basis; it can be said at the outset only that he has a "privilege" to do these things—meaning merely that in so doing he is not violating a duty. Whether in addition he has a right not to have the privilege interfered with by a strike (implying a correlative duty on the part of the strikers not to interfere with it) is the very question at issue; the right does not necessarily follow from the privilege.

The courts which have been clearest on the question have developed what has been called the *prima facie* tort theory, according to which there is a *prima facie* presumption that the intentional infliction of damage or economic loss on the employer is illegal; but the presumption can be rebutted by showing a justification. This usually takes the form of proving that the defendants were attempting to promote some reasonable and not too remote interest of their own: in deciding what sort of interest is reasonable and not too remote the courts must face an issue of policy. When justification is not proved it is sometimes stated that the motive of the defendants was one of "disinterested malice." According to some statements malice in the sense of ill will is essential to make the conduct illegal; according to others it is immaterial. Still other judges use the word malice as indicating merely the legal conclusion that the infliction of damage is unjustified. The word is so slippery that it seems better to follow those judges who drop it altogether. However, some judges of the English House of Lords, as the discussion in *Sorrell v. Smith* [(1925) A. C. 700] indicates, still inquire into the state of mind of the defendants and indulge in speculation as to whether their real motive was to harm the plaintiff or to benefit themselves, forgetting that the real motive was probably to harm the plaintiff in order to induce him to act in a way which would benefit the defendants.

The *prima facie* tort doctrine apparently does not enable an employee to make his employer show a justification for discharging him, although it might avail him against one who without justification induces his employer to do so. In *Coppage v. Kansas*, 236 U. S. 1 (1915) it was held that the legislature might not constitution-

ally make it a crime for an employer to discharge an employee for refusing to sign a yellow dog contract—an agreement not to be a member of a union while holding the job. The court did not find any need for justifying the employer's conduct. It may possibly have assumed that the employer's interest in the union affiliations of his own employees would be a sufficient justification. More probably its attitude is to be accounted for by the notion that the *prima facie* tort doctrine applies only to affirmative acts and that mere non-feasance is never a tort. Refusal to continue to employ is regarded as non-feasance, as is also refusal to continue to be employed; but a strike involves the affirmative act of combining. The distinction is made more readily acceptable to the courts by the bad odor which still clings to the concept of a conspiracy and by the modern rationalization to the effect that acts harmless enough when performed by persons acting singly may become intolerable when performed by many acting in concert. The rationalization ignores the fact that discharge by a single employer may frequently be far from harmless to the discharged employee if he can find no other job in his chosen occupation. There is no real reason why conspiracy should be essential for the application of the *prima facie* tort doctrine nor would its application to the discharge of an employee for failure to comply with "unjustified" conditions of employment involve imposing upon the employer an affirmative duty to employ; it would involve only the negative duty to refrain from the act of imposing those conditions.

Courts which apply the *prima facie* tort doctrine differ as to what constitutes a justification for the intentional infliction of damage by means of a strike. Higher wages, shorter hours and improved working conditions are quite generally regarded as justifiable ends. Strikes for a closed shop are apparently regarded as unjustified in Massachusetts but justified in New York. When a union attempted to instigate non-union workers in another shop to compel the latter's employer to unionize, the attempt was said to be illegal by Justice Pitney in *Hitchman Coal & Coke Co. v. Mitchell* [245 U. S. 229 (1917)]. Here, however, he did not apply the *prima facie* tort doctrine and bring into the open his grounds of policy for condemning the union's campaign; he asserted merely that the union was interfering with the employer's "undoubted right" to operate on a non-union basis. Chief Justice Taft, however, in 1921 suggested that unions



had a legitimate interest in making "their combination extend beyond one shop" (*American Steel Foundries v. Tri-City Central Trades Council*, 257 U. S. 184), and the New York Court of Appeals in 1927 made an even more definite pronouncement to that effect in *Exchange Bakery & Restaurant, Inc., v. Rifkin* (245 N. Y. 260). In the latter case an injunction was denied despite the fact that the union was inducing the plaintiff's waitresses to break their promises to remain out of the union. These promises, said the court, when attached to employment contracts terminable at will, were lacking in consideration and did not constitute valid contracts. This view of the law of contracts is at variance with that of the federal courts, as evidenced in the *Hitchman* case, which in addition to the grounds which have been stated held that inducing the breach of a yellow dog contract was an illegal means of conducting the campaign. The *Norris-La Guardia* Act of 1932 provides that such contracts are against public policy and shall not afford any basis for the granting of legal or equitable relief in the federal courts. It has been suggested that this provision violates the constitution in the same manner as did the legislation in the *Coppage* case. The latter, however, made it a crime to insist on such contracts, while the federal law merely makes the contracts unenforceable. The language in the *Coppage* case was broad enough to indicate that any legislative interference with the bargaining power of the employer would be held to be an unconstitutional interference with liberty of contract, unless it had direct reference to health, safety or morals. But this inference is shaken by the opinion rendered in 1930 by Chief Justice Hughes, who had dissented in the *Coppage* case, affirming an injunction under the *Railway Labor Act* which restrained the company from interfering by threats of discharge and the like with its employees' free choice of representatives to negotiate for them (*Texas & New Orleans Railway Co. v. Brotherhood of Ry. & S. S. Clerks*, 281 U. S. 548).

A boycott seems to require greater justification than a strike, although courts have not agreed on the legality of the various types of boycott. Boycotts against employees have at times been pronounced illegal, as in *Carlson v. Carpenter Contractors' Ass'n* [305 Ill. 331 (1922)] and in *Cornellier v. Haverhill Shoe Mfrs.' Ass'n* [221 Mass. 554 (1915)]; in the latter case, however, equitable relief was denied on other grounds. A refusal of a union

to work on partly finished non-union materials in order to favor those manufacturers who employ other members of the union, while held lawful in New York [*Bossert v. Dhuy*, 221 N. Y. 342 (1917)], has been held by the Supreme Court to violate the Sherman Anti-trust Act when aimed against a producer in another state [*Bedford Cut Stone Co. v. Journeymen Stone Cutters' Assn.* 274 U. S. 37 (1927)]. The exemption in section 20 of the Clayton Act had been previously held inapplicable to a controversy between an employer and the employees of other employers [*Duplex Printing Press Co. v. Deering*, 254 U. S. 443 (1921)]. The exemption would probably apply, however, to a controversy between the strikers and their own employer, except where violence or other specifically illegal means is used, even if the employees were directly engaged in interstate commerce. But when there is violence, even if the strikers are not so engaged, their illegal stoppage of production intended for such commerce may be construed to be a violation of the Sherman Act, thus giving the federal courts jurisdiction. The test seems to be whether the motive is to prevent the employer from competing with unionized plants in other states and whether the effect of the stoppage might reasonably be supposed to affect prices in other states. Where this is the case the restraint of interstate trade is called direct; otherwise it is called incidental and is said not to violate the federal law, however flagrantly it may violate state laws against violence. In cases of perfectly peaceable boycotts the federal courts have jurisdiction under the Sherman Act if the boycotts involve a direct restraint of interstate commerce; and despite Justice Brandeis' attempt in his dissent in the *Bedford Stone* case to apply the "rule of reason" the majority apparently leaves no scope for future modification of the court's conception of justifiability in these cases, for "restraint of interstate commerce," it said, "cannot be justified by the fact that the ultimate object of the participants was to secure an ulterior benefit which they might have been at liberty to pursue by means not involving such restraint."

In one respect the Clayton Act changed the position of labor for the worse; it put into the employer's hands the remedy of the injunction for injuries caused by restraint of interstate commerce. Previously that remedy had been available only to the government, and all the employer could do was sue at law for threefold

damages. The Norris-La Guardia Act apparently abolishes the federal injunction for conspiring to instigate strikes without fraud or violence, and it greatly limits the scope of the federal injunction in any labor dispute. It also removes many of the specific abuses which labor alleges have developed in the practise of issuing injunctions, such as the grant of temporary restraining orders on ex parte evidence for periods long enough to cripple a strike which may turn out to be entirely legal. Meanwhile the remedy at law for damages has been rendered somewhat more efficacious in the federal courts by the Supreme Court's declaration in the first Coronado Coal case [259 U. S. 344 (1922)] that unions although unincorporated are suable in their own names and "that funds accumulated to be expended in conducting strikes are subject to execution in suits for torts committed by such unions in strikes."

The law's concern with the internal affairs of unions is of growing importance. Through membership in his union a worker's real freedom may be greatly enlarged, but he must submit to such restraints as the union itself imposes on his liberty. The union is a miniature government and its rule may at times become oppressive. If so, the member's privilege of withdrawal may be of no avail to protect him, for leaving the union may involve loss of all occupation at his trade and in any event may leave him exposed to the restraints from which his union membership had freed him. His vote as a member is more important, and courts afford some remedy for dishonest elections. But votes are not always effective even when honestly counted, if the administration is firmly entrenched in power by the methods familiar in machine politics. How the law can remedy such a situation is not very clear. The law does give some relief, however, from the corrupt conduct of union officials in the handling of funds and from arbitrary action on the part of union disciplinary committees in the matter of fines, suspension and expulsion.

When a union succeeds in establishing a closed shop in an entire trade it is governing not only its own members but outsiders. If it excludes the latter from membership it is decreeing that unprivileged persons may not engage in a particular occupation. This it sometimes does on racial or political grounds or to maintain a higher scarcity value for the privileged labor. The writer is not aware of any instances where the law has interfered in these matters, although

the policy of exclusion may perhaps determine at times a court's position as to the justifiability of a strike for a closed shop or as to the validity of a closed shop agreement. If it will admit the outsiders to membership then it is merely making membership compulsory. Some courts object to this; on the other hand, it can be argued that if the union is a desirable organ of government then as with other organs of government all those who benefit from its functioning may properly be required to share in the burden of its support.

In passing on all these questions of labor law the courts frequently determine very delicate questions as to the extent and manner in which the distribution of economic power may be altered through the pressure of bargaining between employers and employees. While increased bargaining power on the part of employees will not remove the more fundamental legal sources of economic inequality it may at times be highly significant. The justifiability of its use in such cases would depend upon a judgment as to the justifiability of the particular inequalities which its use would diminish. Such a judgment would be conditioned largely by the economic philosophy of the judges where the question is not regarded as already settled by precedent. While the doctrines developed by the judges are not infrequently superseded by legislation, this legislation has to be interpreted by the courts. In the United States the Supreme Court has been severely criticized in labor circles for adopting the narrower rather than the broader interpretation of the language in the Clayton Act which legalized certain labor activities. The fault may well have been not so much with the court as with those who drew up the statute, but it has taken Congress more than ten years to enact a new law which would not seem susceptible of the narrow interpretation given to the Clayton Act. Even more significant to organized labor than the power of the courts to interpret a statute is their power to pass on its constitutionality. Judgments on constitutional questions also are necessarily the outcome of the general social philosophy of the judges; for a mere grammatical interpretation of the language of the constitution would not be decisive, and the judicial technique for reaching decisions as to what legislative interferences with the distribution of economic power shall be deemed to fall within the sanction of the vaguely defined "police power" is as yet, perhaps necessarily, crude.

The social philosophy of judges is thus a vital factor in determining how the law shall develop in the absence of legislation, how legislation shall be interpreted pending the enactment of new statutes and how far the legislature shall be permitted to alter the judge made law. The philosophy of the trial judge is also of vital importance to organized labor; for although his rulings, if erroneous in the view of the appellate court, are reversible they may decide the outcome of a particular controversy in cases where a reversal would come too late. Moreover the judge has wide discretion as to the finding of facts, the scope of an injunction and the granting or withholding of a temporary order on *ex parte* evidence. Organized labor has frequently used its political influence to prevent the election, appointment or confirmation of judges whose viewpoint it regards as unsympathetic. The most conspicuous instance was its participation in the successful attempt in 1930 to prevent the confirmation of the appointment of Judge John J. Parker to the United States Supreme Court. In this activity labor was following the example set in 1916 when the confirmation of Justice Brandeis was opposed, although unsuccessfully, by groups which feared that his social philosophy was not sufficiently conservative.

ROBERT L. HALE

*Continental.* The familiar contrast of characteristics which is based on the division of western law into Anglo-American and continental law is not extensively applicable to labor law. At present there is a much closer affinity between English and continental labor law. American labor law, which has undergone far less socialization than either, is set apart by its backwardness; it has simply carried to their logical extremes certain English developments, such as the law of conspiracy and the injunction, and the latter indeed remains its most prominent feature. In the treatment of labor problems much the same expedients have been tried in continental countries as in England and the United States. Examples of such attempts to fix wages as those represented by the English Statutes of Labourers may be found also in continental countries, where special servants' ordinances were a particular feature of legislation. The differences in the history of the labor law of the various western countries have been determined not so much by the invention of new expedients as by the selection from univer-

sally familiar ones. England as the country in which the industrial revolution first appeared simply showed the way.

In continental countries as in England the early relation between employer and employee was largely one of dependency on the part of the latter. The idea of relationship at the basis of the English law of "master and servant" is a general Germanic conception. Although slavery was known among the Germans, it was held not unfitting for a freeman to serve another; in cases of such service a relation of personal loyalty was established between them. The contract was one of faithful service. The duty of the retainer to serve his lord was not in itself contractual but arose from the established relationship, whence arose also a duty of protection and care on the part of the lord. Gradually, however, the basis of the service became contractual; the personal relationship receded into the background and the promise of service became the essence of the contract. The subjection of the servant to the master remained but it was no longer the basis but the consequence of service. Although the status of the servant class deteriorated progressively from the end of the Middle Ages, the old relational conceptions persisted.

Even the reception of the Roman law was unable to effect any considerable displacement of Germanic ideas. The Germanic law had developed many specialized forms of labor contracts which were well suited to the growing need for free labor, while the forms of the Roman law were ill adapted to it largely because they had developed in a slave economy. The Roman law had dealt with the labor relation as a form of lease. There was the *locatio conductio rei*, the letting of a thing; the *locatio conductio operis*, the letting of a job; and the *locatio conductio operarum*, the letting of a service; and the three forms were assimilated, although free labor was involved. The common law of the Pandects preserved the Roman doctrinal union of the labor contract with the hire of things, but in actual practise it was of little influence in most parts of Germany.

As in England and the United States the beginning of the nineteenth century witnessed the general recognition of the principle that the labor relation was to be regulated under the ordinary principles of contract. The French Revolution ushered in freedom of contract. Employer and employee were to be treated as equals. Yet the *Code Napoléon*, slavishly follow-

ing the Roman law, spoke briefly of a *louage d'ouvrage*, a letting of work, and a *louage d'industrie*, or a letting of services (sects. 1708-11). It had in all only two other provisions respecting labor relations. Article 1780 embodied a provision which had been part of the customary law of France since the seventeenth century to the effect that in any dispute as to wages or salary between a master and his employee or servant the master was to be believed upon his mere affirmation. This provision, which was not abrogated until 1868, must have been difficult to reconcile with the declared equality between employer and employee. The other provision, contained in article 1781, which related to an employer's powers of discharge, was also entirely in favor of the employer and was not modified until 1890. Modern continental legislation has in general regulated carefully the employer's powers of discharge and the employee's right to give notice.

The German regional codes of the late eighteenth and the nineteenth century completely rejected the Roman law conceptions of the labor relation. The Prussian *Allgemeines Landrecht* of 1794 was the first to do so. It treated the labor contract under contracts requiring positive acts (*Handlungen*) but contained few general provisions, following the Germanic tendency of regulating particular forms of labor contracts. The example of the Prussian code in rejecting the Roman law was followed by the Saxon code, the Austrian code and the Swiss Code of Obligations and finally by the German civil code at the end of the nineteenth century. It recognized two distinct forms of labor contracts, the *Dienstvertrag* (sects. 611-30), or contract of service, and the *Werkvertrag* (sects. 631-51), or contract of work. Its standards of protection of the worker naturally showed a considerable advance over the French civil code of the early years of the century.

Even as the nature of the employment relation was fixed by the ordinary law of obligations in the early decades of the nineteenth century, the liability of the employer for an injury to a worker was fixed by the ordinary civil law of wrongs. On the whole, however, the civil law of employers' liability (*q.v.*) was somewhat more favorable to the worker than the Anglo-American common law. The fellow servant doctrine was applied in Prussia but not in France under the *Code civil*. The latter, however, was not held to allow recovery for injuries arising from the ordinary risks of the work. On the other

hand, it allowed contributory negligence to go only to the measure of damages.

The parallel development of the law of combination in England and continental countries is particularly striking. With the decay of the guilds there had arisen associations of journeymen who sought to improve their lot by concerted action. A series of imperial ordinances were directed against them in Germany in 1530, 1548 and 1577, but they proved unavailing. The *Reichszunftordnung* of 1731 was more successful; it not only forbade combinations and strikes but provided (in this respect in a characteristically continental fashion) for police surveillance over migratory workers through a system of certificates of good conduct. The "labor book" was introduced into France in 1803 and spread through other European countries. The ordinance of 1731 was followed very closely in the German states. In France the guilds were dissolved after the revolution. In 1791 the Constituent Assembly passed the famous *Loi chape-lier*, which outlawed all combinations of masters or workmen and penalized strikes and lockouts. These provisions were codified in sects. 414-16 of the *Code pénal*, which had particularly great influence upon continental legislation.

The first half of the nineteenth century witnessed the general denial of freedom of trade association, while in the second half of the century the prohibitions were gradually relaxed or repealed. Saxony was the first German state to allow freedom of trade association (1861). The latter was recognized by the North German Confederation in 1869 and by the empire in 1872—subject, however, to important restrictions. The penal provisions against trade association were removed in France in 1864, but freedom of trade association was not proclaimed till 1884. The close resemblance between the combination law of France since 1884 and the combination law of England since 1875 has been pointed out by Dicey. It must not be supposed, however, that the recognition of the right of combination has been more significant on the continent than in England or the United States with regard to the removal of all limitations upon the actual conduct of labor disputes. General statutes against threats and intimidations have served much the same purpose as has the common law of conspiracy. Restrictive interpretation of the right of combination has been virtually a universal phenomenon. The law relating to strikes (*see STRIKES AND LOCKOUTS*) and boycotts (*see BOYCOTT*) must always be taken

into consideration. A feature of continental labor law which has been absent in both England and the United States (except for the ill fated Kansas Industrial Relations Court) is special industrial courts for adjudicating labor disputes (*see* COURTS, INDUSTRIAL).

Even before the second half of the nineteenth century there began in continental countries the general abandonment of the principle that labor relations were to be determined by the normal law of obligations. The general civil code provisions were supplemented by special provisions governing special types of labor contracts. These were sometimes contained in special laws relating to particular classes of workers or in supplementary general codes, such as the continental commercial codes. Most common were the industrial codes. Prussia enacted an industrial code in 1845, Austria in 1859. The industrial code of the North German Confederation of 1869 became the code of the German Empire. Most important in indicating a new attitude toward the labor relation was the legislation for the special protection of the worker which is described in the article on labor legislation. Such legislation was sometimes embodied in special statutes and sometimes in a general code. As a result of these developments the sources of continental labor law have become highly complex, while the multiplication of administrative orders has reduced them almost to chaos. Thus the functions of judicial interpretation with respect to labor subjects have been extremely important in continental countries, although not as important as in the United States. Continental courts, however, have at times tended also to exalt the provisions of the general civil and penal codes, which of course are not abrogated, to the detriment of special legislation. The general codes thus serve a function analogous to that of the Anglo-American common law.

The practise of codification is a special characteristic of continental law. Such codification has been made particularly necessary by the confusion in the labor law of the chief industrial countries. France has a *Code du travail et de la prévoyance sociale* of quite recent date; this is not, however, a really uniform labor code. Although continental codes are usually statements of an existing body of law according to some logical plan, the *Code du travail* is much more like an Anglo-American volume of compiled statutes, merely assembling under various heads the existing French statutes relating to

labor law. It is ultimately to have seven books, but so far only two have been published: book one in 1910 and book two in 1912; books three and four have been promised.

The labor law of Germany has been more advanced than that of any other European country with the exception of Soviet Russia. The basis of German labor law before the war was paternalistic; since the Weimar constitution important new institutions have been created, and the worker now enjoys by right privileges formerly granted as favors. Legal provisions have been made for employee representation. A new system of labor courts has been established, and the collective contract has been introduced as a flexible means of legal regulation of labor relations in any given industry. Such collective agreements have normative effects: not only do they govern the organizations which have concluded them, but their provisions become part of each individual worker's contract. The collective agreement may be said to be the very crux of German labor law; yet all notions of contract have not been abandoned, for it is laid down as a fundamental principle that there must be no compulsion on either side in the conclusion of the agreement.

The intensive development of German labor law since the war has led to its treatment as a special branch of juristic science. The new discipline of *Arbeitsrecht* has been cultivated by a growing number of German jurists, among them such men as Kaskel, Hueck, Nipperdey, Pott-hoff, Jacobi and Sinzheimer. The attempt is being made to work out a body of labor law upon fundamental principles, to reconcile existing divergences and to prepare the way for future legislation, especially for the uniform labor code which is envisaged by article 157 of the Weimar constitution. Thus far the existing provisions of German labor law have been admirably systematized. As to many fundamental principles, however, there is still no general agreement. According to the prevailing view labor law is conceived as the special law of the dependent wage earners. The concept of labor law does not extend to all the labor of men in society but is confined to a certain type of labor relation and must therefore be regarded as a purely modern branch of law. It is partly private law and partly public, since its content is determined not by subject matter but by the existence of a certain relationship. The most desirable method of regulating the labor contract has also led to divergence of views. It is possible to

regulate each form of labor contract separately or to make regulations which shall govern all forms of labor contracts. German legislation has not waited for all possible theoretical difficulties to be solved but has continued its own development. It is perhaps doubtful whether an entirely consistent system of labor law can be elaborated in any western democracy. The compromises dictated by the economic system are bound to be reflected in the principles of the labor law.

Yet principle is perhaps less important than might be supposed. The Soviet labor code of 1922 and the Italian charter of labor of 1926 are doubtless more consistent with the regimes which have established them, although neither the labor law of the communist nor of the corporate state is unique; both bear a startlingly close resemblance to that of such states as Germany and even France. The institution of the collective agreement has been introduced into all these countries since the World War, and their legislation for the protection of the worker has strongly marked common characteristics. Even compulsory arbitration is not to be connected solely with dictatorship. The labor law of the great European industrial states represents virtually a European common law. The actual differences in the conditions of the worker in the various countries is determined not so much by legal factors as by political forms and economic pressures.

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See: LABOR MOVEMENT; TRADE UNIONS; LABOR PARTIES; LABOR, GOVERNMENT SERVICES FOR; GOVERNMENT REGULATION OF INDUSTRY; FACTORY SYSTEM; INDUSTRIALISM; HUMANITARIANISM; LABOR CONTRACT; COLLECTIVE BARGAINING; TRADE AGREEMENTS; FREEDOM OF ASSOCIATION; ASSEMBLY, RIGHT OF; STRIKES AND LOCKOUTS; BOYCOTT; BLACKLIST; LABOR; CONSPIRACY, CRIMINAL; LABOR INJUNCTION; ARBITRATION, INDUSTRIAL; COURTS, INDUSTRIAL; INDUSTRIAL RELATIONS; HOURS OF LABOR; WAGE REGULATION; MINIMUM WAGE; CHILD; WOMEN IN INDUSTRY; HOMEWORK, INDUSTRIAL; INDUSTRIAL HAZARDS; INDUSTRIAL HYGIENE; SOCIAL INSURANCE; WORKMEN'S COMPENSATION; EMPLOYERS' LIABILITY; INSPECTION; LEGISLATION; JUDICIAL PROCESS; JUDICIAL REVIEW; CONSTITUTIONAL LAW; INTERNATIONAL LABOR ORGANIZATION.

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## Labor Legislation — Labor, Methods of Remuneration for 677

LABOR, METHODS OF REMUNERATION FOR. The methods of remunerating labor in return for work performed may be classified according to the form of payment or according to the basis for measuring the amount of remuneration. In modern capitalistic society money is the principal form of wage payment. There have been periods, however, subsequent to the spread of coinage as well as antecedent to that development, when wages were paid in other media; as, for example, in kind, in services or in food, clothing and shelter. In other periods monetary compensation has been combined with other forms of remuneration. In such cases money wages have not always been the most important component of the compensation but have at times been merely supplementary to the provision of food, clothing and shelter.

In the economy of the ancient world after the development of coinage wages were paid partly in money and partly in commodities. The relative importance of these two constituent elements varied in general with the nature of the work, the period and the country. Throughout ancient history payments for agricultural labor were predominantly in kind; in urban commercial and industrial work, on the other hand, the monetary element in remuneration tended to increase in importance with time. By the fifth century B.C. workers in Athens were being paid chiefly in money; in Egypt, however, payments in kind continued predominant somewhat later than in Greece and Rome. The rise in the importance of monetary payments was not entirely regular and unbroken; in such periods as that of the debasing of the Roman coinage in the fourth century A.D. wage payments, like payments in general, reverted almost entirely to a barter form.

In the manor villages of the early feudal system the remuneration of labor, craft as well as agricultural, was characteristically in forms other than money: in protection, in the right to cultivate certain strips of land, in compensatory services and commodities. The development of commerce, the disappearance of the self-sufficient manors and the rise of merchant and craft guilds in towns and cities led gradually to payment in money in addition to other forms of compensation. Under the guild system industry was generally carried on in the master's house; the apprentices and even the journeymen generally comprised part of the master's household, and a considerable part of their compensation consisted of food, clothing and shelter provided by

the master. Here and there, however, apprentices and other workers were brought together under conditions which resembled modern loft factories. The wage system of modern capitalism with its emphasis on the cash nexus did not reach its full development until after the industrial revolution. The invention of power apparatus and the removal of work from households to factories made it no longer necessary or practicable for employers to accept the workers as part of their household, and the payment of money wages to a body of free laborers became the characteristic form of remuneration in capitalistic industry.

Yet payments in forms other than money have not entirely disappeared. In agriculture, domestic service, lumbering and similar extractive industries and in construction operations on frontiers, such as highway, railroad and power projects, bed and board and other necessities are supplementary forms of remuneration. When in such enterprises the relations of employer and employees are intended to be permanent, as in the development of a mine in an unsettled mountain region or of a cotton mill on an unsettled power site, the employer may build homes, establish retail stores and provide other community facilities for which nominal prices are charged, and these are rated as supplementary remuneration. In some instances, however, this payment in conveniences and "truck" may be equivalent to a diminution of real wages because of the excessive prices charged. In general these supplements to money wages are likely to be found today wherever industrial operations have called a considerable colony of workers together in a place unprovided with basic community facilities.

Somewhat different is a type of supplementary remuneration which is not necessitated by lack of basic community facilities but is added voluntarily by employers in socially developed centers. In a competitive money economy an employer hesitates to depart from the payment of customary wage rates by independent voluntary increases; yet because of a desire to secure the advantages of a low labor turnover and a productive goodwill he may be willing and able to give his workers certain supplementary satisfactions. Among these in addition to fair dealing and good management with the implied corollary of steady employment are exceptionally favorable conditions of ventilation, heat, light and cleanliness; rest rooms, cafeterias, gardens and playgrounds; dental and medical service; promotion and partial support of employee



clubs; classes for technical and general education; savings banks, 'group insurance and group investment organizations; accident, old age and unemployment insurance; and other types of welfare institutions. The term non-financial incentives to describe such provisions has taken a permanent place in management literature. Such types of welfare activity are, however, not always accepted whole heartedly by the workers, who in many cases would prefer an increase in their monetary wage to be disposed of as they themselves see fit. Organized labor, particularly in the United States, has opposed welfare work on the grounds that it leads to paternalism and autocracy on the part of the employer, suppresses the initiative of the workers and delays the progress of industrial democracy, divides the allegiance of the worker to his organization and in the last analysis operates at the expense of wages.

With regard to the classification of methods of remuneration according to the basis for determining the amount of money to be paid there are three principal types: the time wage, in which payment is for units of time (usually hour or day) without special regard for output; the piece wage, in which payment is for units of output without special regard for the time applied; and the efficiency wage, in which payment is for the degree of accomplishment of some predetermined standard, such as quantity per unit of time, quality, economy of materials consumed or combinations of these and other standardized factors. This customary classification is one of convenience rather than of strictly logical distinction. To hold his job a worker on a time wage must maintain some minimum quality, a worker on a piece wage must maintain some minimum output per unit of time and in all efficiency wage systems both time and output are major factors of the various formulae. From the point of view of the sharing of productivity these basic systems have different consequences. Generally the time wage system gives the advantages of improved technology to the employer, the piece rate system gives them to the employee and the efficiency system divides them in some ratio between the two. These generalizations are true only so long as no drastic changes are made either in the rate per piece or per unit of time. In addition under any wage system competition gives a share of technological advantages to consumers. The share of the increase attributed to the worker under an efficiency system is usually designated as his premium or bonus. The possibility of combining an almost infinite variety of factors in

constructing efficiency wage formulae has led to the devising of a large number, which are loosely and improperly labeled systems.

Both the time wage and the piece wage systems have long histories. They were a feature of the economic societies of Egypt, Greece and Rome, and as free labor emerged out of feudal institutions both of these systems returned to use. Where the tasks required of a worker were varied, as was usually the case, wages were paid on a time basis; but where the labor was for a definite task, such as weaving on a hand loom, the payment was sometimes based on output. With the development of the larger household industrial establishments and especially of the factory system following the industrial revolution, the time wage became the dominant system of wage payment.

About the third quarter of the nineteenth century a rapid increase in the size of factories and of their equipments created new problems of supervision of factory labor, which caused special attention to be turned to efficiency systems of wage payment. The only incentive system then known was the piece rate, but rapid extension of the use of this system was retarded by labor controversies resulting from the tendency of management to cut the piece rates in order to obtain some of the benefits arising from the advances in managerial technology. It was a period of great mechanical inventiveness, and the introduction of a new, more productive machine in a particular industry put those concerns which had piece rates at a disadvantage in competition with concerns having time rates, unless the piece rates could be proportionately reduced. A machine lowers costs of production where time rates prevail, but not where inflexible piece rates prevail. It was not until job analysis, with its standardization and specifications, became a part of managerial technology and made possible flexible and adjustable piece rates conditioned on the standard elements of operations that this wage system assumed its present status among forms of remuneration.

This early difficulty with piece rates stimulated search for some other form of wage payment which would have incentive value and yet give the employer a share of the advantage of increased productivity from the invention of a new machine and from improvements in operating conditions and methods. This led to the appearance late in the nineteenth century of a number of efficiency wage formulae. The first to be developed was the premium, or gain sharing,

system represented by the Halsey, Rowan and Towne-Halsey formulae, which established a standard based on the average of past performances; any savings resulting from the fact that a worker exceeded that standard output were divided between employer and worker on some empirical ratio. These premium formulae were followed by the Taylor differential piece rate and the Gantt task and bonus formulae, in which the standards were determined by experiment and time study measurements; by the Emerson efficiency bonus plan, which established standards less empirical than the earlier formulae but less scientific than those of Taylor and Gantt; and more recently by several scores of other formulae, which are only variations of the historic types already mentioned.

Both the Taylor differential piece rate and the task and bonus efficiency type of his assistant Gantt, which Taylor himself adopted as more manageable than the former, introduced a factor into the making of incentive wage formulae which has revolutionized the managerial environments in which wage systems have been applied and thereby indirectly so revolutionized all wage systems that the fundamental differences between them are disappearing. This factor is the scientific management principle of research determination of the standard or base from which differentials are computed. The earlier Halsey, Rowan and Towne-Halsey formulae had accepted job conditions as they were and utilized averages of past performance as the base. Taylor introduced the technique of painstaking experiment to improve the conditions and methods of each job and then used as the base the amount of time, determined by a stop watch, in which the job should be done under the improved conditions. This technique of stop watch measurement of experimentally standardized conditions has recently come to be used also in constructing nearly all efficiency wage formulae and in many instances in setting standards for workers on time wage rates. Piece, efficiency and even time rates based on time studied standard outputs per unit of time are much the same fundamentally, the differences being those of convenience in computation and application under particular circumstances. The essential difference between one wage formula and another has thus come to rest on the difference between the systems of management of which they are parts rather than on the mathematical characteristics of the formulae themselves.

Comparative data concerning the relative ex-

tent to which the different types of wage payments are being used are lacking. Wage statistics and a few sampling studies here and there indicate that generally throughout world industry the time wage is dominant, even in the most highly industrialized regions. In central and western Europe the piece rate has a strong position in many trades, as have both the piece rate and the efficiency types in the United States. In agriculture and most extractive industries, in the heavy unskilled work of manufacturing industries and in general wherever labor is called upon to perform a miscellany of jobs in the course of a day's work the time wage has proved to be the most manageable. In manufacturing establishments and in such extractive industries as mining, in which the unit of output is highly standardized and is measurably related to effort, the piece rate (including its contract rate variant) and the efficiency wage occupy an increasingly important place. The basis of payment is, however, seldom the same even throughout a single industry. In almost every time wage factory there are some pieceworkers and vice versa. A combination of four recent sampling studies of methods of wage payment in manufacturing industries in industrialized sections of the United States indicates (roughly, because the methods were not identical) that 40 percent of the wage earners covered were on time rates, 35 percent on straight piecework and 25 percent on premium or bonus plans. In the metal, clothing and footwear industries the percentage on piece rates was much higher than the average; and in the textile, food and printing industries the percentage on day rates was much the higher.

These studies show that the major position occupied by the time and piece rate systems reflects two important tendencies in industrial management: first, increasing use of standardization through time studied job analysis and, second, avoidance of the complicated formulae represented by premium and bonus plans in favor of the simpler wage systems. These tendencies, as has already been noted, are related. Given the control of operations made possible by thoroughgoing time study standardization, the simpler time and piece rate formulae can be given much if not all of the incentive value for which premium and bonus plans were devised. Provided standardized conditions are present and have been measured and valued, a time rate may be conditioned on a standard quantity and quality performance, just as a piece rate, a bonus or a premium is conditioned on a standard time of

performance. In some highly mechanized industries where machines in synchronized series set the pace of output one system of wage payment has no more incentive value than another. Therefore those systems which are the simplest for purposes of record and computation are preferred as other differences between the various systems tend to disappear. The stimulus which led to the devising of premium and bonus wage formulae was the desire to secure constant reasonable application of less strictly supervised labor energy and particularly constant maximum utilization of equipment and diminution of overhead costs and incidentally to win by money incentive an acceptance of the new methods of precise measurement and standardization in management. Wherever management through standardization has become familiar and acceptable to workers, the last element of the stimulus is no longer so important and the other two elements can be provided for by either time or piece rates.

The basis of remuneration, like the rate, has been a frequent subject of labor controversy. When first introduced the piece rate met with universal opposition from the workers, chiefly because of the employers' penchant for rate cutting. Although the attitude differs from industry to industry, organized workers are in general opposed to piece rates, especially in industries in which production standards have not been developed, as in the cloth hat, cap and millinery industries. Where production standards and a precise flow of materials have been properly developed, however, the piece rate is more generally acceptable. Experience with bonus and premium plans has been much the same. Early opposition to them was largely based on a failure to understand the complicated formulae and the fear that they concealed opportunities for rate cutting similar to those offered by the piece rate method. Where production standards have been developed, these types also have come to be accepted. On the other hand, where carefully studied production standards do not exist and standards and premium ratios are arbitrarily imposed, as in many textile plants of the southern states, efficiency plans of wage payment meet violent opposition. Controversies involving the basis of wage payment as an issue generally have as the more fundamental issue distrust of the intentions and competence of the management. Where careful organization and standardization of operations and a definite policy of industrial relations are present the wage arrangement,

whatever basic type it may represent, can be effected without controversy because the facts of the situation are understood by both parties to the negotiation and the employer's desire for high production and low costs can be reconciled with the workers' desire for adequate earnings, proper conditions of work, absence of discrimination and fair dealing generally. Where these prerequisites are absent and the management is inspired by a policy of opportunism in which the commodity theory of labor plays a strong part, workers feel that their interests are best conserved by the simple time wage. The interest of consumers as represented in the quality and price of output is little affected by the method of wage payment as a factor distinct from the method of management. No wage system per se can bring price and quality under control; on the other hand, competent management can bring them under control with any system of wage payment, although the piece rate and efficiency systems make the task easier. It is at this point that the "non-financial incentives" which are always created by competent management play an important part.

The group bonus, a recent addition to the methods of wage payment, is in principle identical with the individual bonus or premium. The growing favor which the group bonus as compared with individual bonuses is receiving from managements is due to the relative simplicity of the records and computations involved and to the fact that it stimulates within the group a co-operative self-supervision. Where group work is carefully organized and standardized and the members are carefully selected, the method works very well because cooperation is emphasized; but when such care has not been exercised, the cooperation may become transformed into a ruthless policing of the weak by the strong members of the group with resulting ill will.

On the executive and distributive side of capitalistic industry the principal method of wage payment is the time wage. Executives receive annual salaries, and clerical workers in both offices and merchandising establishments generally receive a monthly or weekly wage. In a few instances office employees are remunerated by bonus plans on the basis of measured output, but this is exceptional because of the difficulty of measuring clerical work. Sales people usually receive commissions based on volume of sales in addition to a stated time wage, the commission usually forming all or the greater part of the remuneration in the case of manufacturers' sales-

men and persons selling such services as insurance but less frequently in the case of retail sales people. Supervisory personnel may sometimes receive in addition to a time wage a commission or bonus on the earnings of those whom they supervise. In some enterprises profit sharing (*q.v.*) is an additional form of remuneration for the executive group, but its application to the rank and file of workers after some experiments in that direction has practically been abandoned. Employee stock ownership can hardly be classed as a form of remuneration for labor, inasmuch as the income is from investment; bonus elements are present, however, where the stock is made available at a preferred price or given outright or where special privileges are afforded in the method of purchase.

What the forms and bases of remuneration for labor would be under a regime of pure socialism or communism which would utilize modern technology, particularly specialization and division of labor, is wholly speculative. The various experiments with communistic settlements (*q.v.*) have generally employed the principle of equal claims by all members upon the income of the community, with distribution in the form of food, clothing and shelter out of the common store. In the attempts which have been made at producers' cooperation (*q.v.*) payment has consisted in the last analysis of the share of the individual worker in the profits of the enterprise, distributed partially in advance in the form of more or less regular wage payments and partially in the form of dividends or an equal share in the increased value of the establishment. Where, as was frequently the case, outside labor was utilized by these communistic settlements and cooperative enterprises it was generally paid in the form and on the basis prevailing outside the enterprise.

Such communistic settlements and ventures in producers' cooperation have been neither sufficiently large nor sufficiently influential to affect prevailing methods of remuneration for labor; they have generally tended to disappear eventually or to become absorbed into the dominating capitalistic environment. The industrial regime of the Union of Soviet Socialist Republics, however, with its ultimate aim of establishing a thoroughly communist society based on an industrial mechanized economy rather than on a simple agrarian economy is of the greatest significance, even though its present forms of organization and of remuneration may not be final. Speaking broadly, all citizens are workers be-

longing to one or another functional class as employees of the collective whole, which owns the instruments of production and through its agencies conducts the processes of industry and commerce. The remuneration of the workers is of three kinds: money wages, based predominantly on time and piece rates, varying according to the grade of work but without a wide spread between the highest (executives) and lowest (unskilled) and including also certain special or collective bonuses for increased efficiency awarded to groups of workers engaged in directly productive work; collective remuneration in the form of socialized services, such as education and training, recreation facilities, medical care and other welfare attention, housing and various types of insurance; and special privileges accorded certain categories of workers, such as preference given manual over intellectual workers in the matter of housing accommodations and retail purchases. Money wages paid in Soviet Russia are not easily comparable with those paid in capitalist countries, because so large a proportion of the Russian workers' remuneration is in non-financial socialized forms. The tendency seems to be toward increased emphasis upon payment on the basis of results and an increasing divergence between the compensation of different strata of workers. The presence of so many incalculable elements in the Russian situation makes it impossible to foretell what forms and bases of remuneration will ultimately prevail and whether eventually the communist ideal—"from each according to his ability, to each according to his need"—will be realized.

H. S. PERSON

See: LABOR; WAGES; WAGE REGULATION; LABOR CONTRACT; TRADE AGREEMENTS; SCIENTIFIC MANAGEMENT; PERSONNEL ADMINISTRATION; WELFARE WORK, INDUSTRIAL; PROFIT SHARING; EMPLOYEE STOCK OWNERSHIP; PRODUCERS' COOPERATION; COMMUNISTIC SETTLEMENTS; SOCIAL INSURANCE; COMPANY HOUSING.

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LABOR MOVEMENT is the term which is used to designate all of the organized activity of wage earners to better their own conditions either immediately or in the more or less distant future. In all countries it has run along three lines—political, economic and cooperative. These have not been parallel but have alternated in predominance in the same country or have predominated differently in different countries according to differences in institutions and economic conditions.

Essentially the labor movement implies the existence of a wage earning group, but it does not appear until that group develops some consciousness of the separateness of its interests as opposed to those of its employers and until it realizes the necessity for some form of organization in order to advance these interests. Its earliest time limit must be sought in the period of capitalism, when the free wage earner replaced the bound serf of feudalism. The labor movement is always a reaction and a protest against capitalism.

But capitalism is not a single or static concept. It is an evolutionary concept of three historic stages—merchant capitalism, employer capitalism and banker capitalism. The first arose out of the extension of markets and the second

out of technology; the last is now dominant as a result of the prevalence of the credit system. Labor movements reflect these capitalistic movements.

Different industries move at different rates of speed toward final consummation. In the merchant capitalist stage the wholesaler aided by the rising commercial banker dominates the access to distant consumers, while the producers are scattered in small shops of masters, mechanics, apprentices and helpers. The employer here is himself a mechanic contracting to deliver the finished product to the merchant capitalist, who owns the raw material, while the contractor owns the shop and the journeyman the tools. This is the sweatshop system of production, because the merchant capitalist sets the contractors to competing with each other and with homework, prison work and foreign producers, so that their profit as employers comes mainly from the "sweat" of the workers. The building trades are the typical lag from this stage of capitalism; in the case of agriculture this stage survives in the middleman system.

In this merchant capitalist stage arises the revolutionary philosophy of Proudhon's anarchism for industry and cooperative marketing for agriculture. If a social philosophy means a certain view of human nature and a goal toward which a movement is directed, then the philosophy of anarchism is that of individual property of small producers with voluntary cooperation to displace the middleman as the goal. The anarchist philosophy does not abolish private property—it proposes to make it universal for each individual, conforming to a stage of industry where the contractor owns the shop and the peasant the farm. The small proprietor who works with his men is idealized as a competent business man who could succeed in bargaining cooperatively if the great middlemen and their banking affiliates did not have monopolistic power granted by governments. This is indeed the philosophy of the small capitalist, the *petite bourgeoisie*; and it is not surprising that after a similar revolutionary movement of wage earners has arisen under the name of syndicalism the petty capitalists of this stage, unable to combine cooperatively, should combine politically under the banner of Fascism to dominate the big capitalists and bankers on the one side and the revolutionary wage earners on the other.

It is in this stage of merchant capitalism that trade unionism also emerges. The trade union is originally a union of the journeymen or

## Labor, Methods of Remuneration for — Labor Movement 683

skilled mechanics working in the small competing shops of the petty employer. They eventually abandon cooperation and the other ideals of anarchism and devote their energies to strengthening their bargaining power. At first the unions are confused about the economic position of this petty employer who works along with them and is today a journeyman, tomorrow a contractor and employer. They admit him to membership because his economic interest is that of a wage earner; then they exclude him because his interest is with the capitalists, for whose profit he hires the wage earners. This is the stage of craft unionism which excludes helpers and unskilled workers and endeavors to control apprenticeship and maintain the "union shop" or "closed shop" for the sake of increased bargaining power. The philosophy is that of the skilled mechanic, who has "invested" years of low wage apprenticeship for the sake of an established position and a higher standard of life and yet sees himself unemployed and brought down to the level of the lowest by their competition. It is the stage of trade unionism which began in 1850 in England and the United States and of the Hirsch-Duncker unions organized in Germany twenty years later.

When the employer becomes the capitalist by owning the machinery and factory as well as the goodwill which formerly belonged to the merchant, when the contractor moves into the factory and becomes the foreman, when the skilled mechanic by specialization and machinery is reduced toward the level of the unskilled, then capitalism becomes employer capitalism and laborism tends to become communism, syndicalism, guild socialism or industrial unionism. Karl Marx saw this stage in England after the middle of the nineteenth century and predicted it for the world—the technological stage of capitalism on a wide scale, made possible by the preceding extension of markets under merchant capitalism. This is the stage of the organization of the unskilled beginning in the 1880's with the Knights of Labor in the United States and with the dock workers, gas workers and general laborers in England.

The wage earners as such cannot wait upon a reorganization of society or upon political action for jobs and food. If the reorganization comes suddenly, under the leadership of a Lenin in the midst of world war, they may fall in line, even though the ripened employer capitalism for which Marx would have had them wait has not yet appeared. Their strikes are at first

blind protests; and, although they are thereby unemployed, it is an unemployment concentrated by their own will and not staggered through the years at the will of their employers. Then if successful they acquire "business" leaders, who by placing the agitational leaders in subordinate position negotiate with the employers for the best terms obtainable under the existing institutions of property and liberty. This is the collective bargaining and trade agreement stage of unionism.

Whether the unions turn out to be craft or industrial depends on the capitalistic stage of the industry and the class solidarity of the workers. If they are divided by language, religion, politics, skill, color, race or geographical sections, as in the United States, there must be built up an artificial solidarity, which reaches only the few who can lift themselves above the mass into craft unions. If they are driven together by a history of common subjection to a military, aristocratic, ecclesiastical or proprietary lordship, as in continental Europe, they fall into the widespread solidarity of class struggle and a powerful socialist political party. But if this solidarity is the result of the advance of the employer capitalist, then they vacillate between industrial unionism and socialist parties.

Thus the two goals which divide labor movements are displacement of capitalism and bargaining with capitalism. Displacement takes the form of voluntary cooperation primarily through producers' cooperatives (although consumers' cooperatives also had this aim at first) or the compulsory form of politics, communism or syndicalism. Bargaining with capitalism is unionism. But these goals are not inseparable. They follow a time schedule. In periods of rising prices, of increasing profits and growing demand for labor bargaining with capitalism predominates, because employers can afford to pay and unemployment has no terrors. Revolutionary political activity and socialist utopias are abandoned for the immediate and real gains achieved by union organization. Such political demands as are made deal with the interference with labor's freedom to organize and act on the economic field. In periods of falling prices, of decreasing profits and unemployment the displacement of capitalism predominates as the goal, because capitalism cannot furnish employment and its burdens are actually relieved by unemployment. Political activity, communist agitation and quasi-revolutionary strikes replace

the "business" strikes of unionism. Socialist and communist parties poll large votes and plans for a reorganization of society on a non-profit basis receive serious consideration by unemployed and partly employed workers as well as by radical intellectuals and others.

The period of banker capitalism is the modern variation of Karl Marx' theory of the ultimate concentration of all industry. During the nineteenth century the commercial banker with his short term credits was typical. During the twentieth century the banking syndicates or the investment bankers have risen to a dominant position in the consolidation of industries, the sale of securities and control of boards of directors whose corporate securities they have sold and for which they have become substantially responsible. Millions of scattered investors now automatically organize themselves by transferring their savings to securities floated by trusted bankers.

Labor movements now face a new problem and take on a puzzling new formation. No longer are they dealing with the master workman or the small contractor or even with their own factory managers; they are confronted with an invisible army of investors and speculators led by an invisible syndicate of bankers. Through international affiliations the syndicates are world bankers. A nation, a section of a nation, a restless locality, a labor government, a labor party or a labor union which jeopardizes the credit of its immediate employer thereby shuts down the latter's establishment and transfers employment to other nations, other sections, other employers. In the face of this situation of the twentieth century all labor movements except in Russia seem to be helpless and their leaders despondent. Perhaps returning prosperity will change the situation and reestablish a militant unionism seeking to restore the rights taken from it during the depression, or it may be that labor movements will be relegated to the history which now shrouds the guilds of the Middle Ages or that craft unionism will turn to industrial unionism or communism. Yet many enduring effects remain. Labor movements make a new class alignment unknown to history. Before the industrial revolution it was inconceivable that an unpropertied class could have a permanent interest in the commonwealth. Now, whether it be explained by a higher ethics or merely by the incoming of machine technology, this proletariat by strikes, revolutions or dangerous unrest forces its way into fuller citizenship.

Contrary to previous assumptions the free worker has been found to be individually more efficient than the servile worker. This efficiency, however, is acquired at the cost of unemployment. In the small industry or agriculture of the merchant capitalist stage the worker could obtain at least food, heat and shelter when unemployed. But in the banker capitalist stage the culmination is reached of a huge urban and factory population unprovided with even these minimum necessities of life except through the money wages which stop when unemployment sets in. The political and economic menace of an unpropertied population removed from the soil yet enfranchised grows with the development of the factory system and long distance transportation. In general the degree to which the older institutions of property, liberty and representative government are menaced correlates with the extent to which a non-propertied class has displaced the propertied classes in politics.

The cycles of overemployment and unemployment have doubtless been the main cause of the characteristic movements of this non-propertied class. Marx' prediction of the decay of capitalism rested mainly on the use made of the "reserve army of the unemployed"; and the authorities of Soviet Russia boast that by overthrowing capitalism they have eliminated unemployment, although they admittedly have low wages. But the unemployment which Marx had in mind was the chronic unemployment of displacement by improving technology, whereas the cyclical unemployment which alternates full employment with unemployment is much more serious. In prosperous times and in periods of inflation, when prices are rising and profits augmenting, the employers compete for labor and they readily raise wages far above the hopes previously entertained by the workers. In the deflation period, when profits begin to disappear, the daily rates of wages are not immediately reduced but the laborers are laid off.

This cyclical variation from prosperity to depression has a profound effect upon the psychology of laborers. In the period of full employment there is no pressure upon them to exert themselves, because they can quickly get other jobs at higher wages if they are discharged. They are careless of machinery, they abandon their trucks on the streets, they are insubordinate. But in the period of unemployment hunger drives them to speeding up, to longer hours per day, to lower wages per hour, to submission.

They are first demoralized, then pauperized, then coerced.

Trade union policy follows this cyclical experience, while Marxian socialist policy more nearly follows technological unemployment. In a period of returning prosperity the unemployed are first taken on without a raise in wages; they must work longer hours and at higher speed. Then, as full employment approaches, it becomes easy to organize; the first demands are for shorter hours and, as the cost of living rises, for higher wages per hour. This is the typical although not the universal procedure. In 1897 at the close of the long period of unemployment the membership of all American unions was only 447,000. By 1900 with returning prosperity the membership had risen to 868,500. In 1920 with the post-war prosperity the membership rose to 5,110,800. The unemployment of 1930 and 1931 reduced it to about 3,000,000. Similar changes have occurred in other countries.

Yet like communism trade union policy is based on the philosophy that there is "not enough work to go round." Although opponents charge that they aim to restrict output, many union policies are really designed to ration among the members the limited amount of work. Most restrictive working rules look toward the elimination of job scarcity and the creation of greater job opportunity and security of tenure. Thus the closed shop is a prime necessity where the union is in danger of being undermined by the presence of non-unionists. The number of apprentices is limited in order to limit the present and future number who must share jobs. The railroad unions concentrate on strict seniority rules which in time of prosperity insure to the union men an equal chance of promotion and in time of depression give the older unionists a chance to preempt jobs of lower rank before losing their work entirely. The eight-hour day and the forty-hour week are advocated, whether by legislative or union action, not only on the ground of fatigue and leisure but mainly to share the work with the unemployed. Labor movements concentrate attention on the rate of wages per hour rather than on the earnings per year, because they cannot see steady employment ahead. During the second and third decades of the twentieth century they begin to demand unemployment insurance despite the evident fact, which they recognize, that full wages for employment are better in every way than part wages while unemployed. It matters not whether the avowed goal is displacement of

capitalism or bargaining with capitalism—all agree on a policy substantially based on the experience and fear of unemployment.

These policies go further. In view of the uncertainty of employment the older virtues of thrift, on which Smith's capitalism was built, lose their appeal and give way to the demand for a higher standard of living in the immediate present. While the peasant or farmer or small business man denies himself present enjoyments to accumulate for "a rainy day" or for old age or children, hoping to retire from business in comfort, the so-called high standard of life of the bulk of wage earners is present enjoyment of everything available, including present education of their children, by means of high wages for current work. The working man who saves and then sees his savings lost or his home foreclosed becomes a butt of ridicule for the others who enjoyed their wages while they lasted and are still as well off as the thrifty when wages stop. The philosophy of labor movements becomes the immediate present, for tomorrow is beyond the worker's control.

This explains somewhat the changes of leadership in labor movements and their fleeting affiliations with the disappearing peasants and farmers. What mortgages are to the latter, unemployment is to the former. The mortgages in periods of depression precipitate the farmers into the proletariat of tenancy or wages; then unemployment masses them into wage or class consciousness. In the earlier stages of labor movements and in periods of business depression there is a loose affinity between laborers and small farmers. Each has the merchant capitalist to deal with or in the more feudal countries the affiliated landlords and capitalists. The issue then is between the rich and the poor or aristocracy versus democracy, where later it becomes the issue of wages against rent, interest and profit. In this earlier stage the so-called intellectuals, or intelligentsia, are the natural leaders, for they have a formulated social philosophy and an ability to articulate what the others feel but cannot tell. This is the stage of Marx, Lassalle, Lenin, Powderly, Louis Blanc or Proudhon. Their counterparts survive and come forward in periods of depression, when workers and farmers are desperate, and they retire when aggressive organization, routine and a chance of success call forth leaders from the rank and file, like a Gompers, an Applegarth, a Legien, a Jouhaux.

It is often represented as unfortunate that



labor movements reject these intellectuals, for they need the broader social viewpoint and the scientific mind of the intellectual. But this is a confusion of the leader with the expert. As a leader the intellectual looks to the distant future of a reorganized society. But the wage earner is deeply concerned with his job now. If the intellectual takes his proper place, as he does in all business organizations, not as a leader in forming policies but as a technician in details and an adviser against mistakes, labor organizations begin to use him. This seems to be the case in all ripened labor movements. And the expert is increasingly needed as the new world wide strength of banker capitalism threatens labor movements which have been organized along the older lines of action.

The intellectual has been employed by the labor movement especially in those of its auxiliaries which supplement and implement the political, economic and cooperative activity. Such, for example, is the labor press, manned to a considerable extent by intellectuals who, as in England, have become attached to the movement from the outside or who, as in America, have largely risen out of the ranks of organized labor itself. Another auxiliary activity in which greater reliance has necessarily been placed upon the "outside" intellectual is that of workers' education (*q.v.*). But even here there are strong groups, as in the National Council of Labour Colleges in England, which oppose the use of university trained intellectuals to teach workers' classes; even the English Workers' Educational Association pays lip service at least to the ideal of developing out of the workers' classes themselves a competent body of teachers for these classes. Another growing use of the university trained intellectual is in the research bureaus which are connected with the important central organizations in the larger countries and with some of the more important individual unions.

It must be noted, however, that the intellectual as a "worker by brain" may be forced to join the trade union movement to seek the security he can find nowhere else. Thus in France the greatest increase in unionization since the World War is among public employees, and in the United States the only important gains in membership in 1931 were among federal employees. Unemployment among the professional and white collar workers brings them closer to a realistic view of the labor movement.

There is especially one kind of appeal, the

nationalistic, wherein the intellectual and the rank and file leadership come clearly into conflict. The intellectual is likely to be a cosmopolitan, a pacifist, who sees the working men of other countries subjected to similar capitalists, but the rank and file are dependent on their own employers for jobs more than on the solidarity of the workers of the world. It may be and doubtless will be more oppressive for them if a foreign nation conquers both them and their employers than it will be if they reach an understanding with their employers jointly to fight the foreigner. In Germany the rank and file leadership in the face of a Marxian world philosophy accepted the nationalistic appeal and brought many of the intellectuals with them. The heavy burden placed upon German industry after the war showed that they were right.

In other countries a similar appeal can for similar reasons be relied upon to draw or coerce the wage earners away from their labor movements into collaboration with their employers. In capitalistic nations as in aboriginal tribes the whole population is at war. Warfare is not an aristocratic profession of a military class suppressing the workers at home and whole populations abroad; it is the people in arms. These become mainly wage earners, producing munitions in the rear and carrying them forward to the front and manipulating modern war machines. A new problem is presented of creating loyalty among those who have little or no property to defend, with the result that in the crisis of foreign war the labor movement is more powerful in its wage bargaining than in time of peace.

Yet national wars accentuate a new division, which has its prior economic foundation in the expansion of capitalistic industry: the separation of manual workers from technical, office, professional, educated and social workers. Large scale industry and merchandising push the latter miscellaneous class into a new alignment making these groups more or less conscious of their common interest. They take the place in the social organization formerly occupied by small independent proprietors, and with the remnants of the latter they form that third minority group which appears under different names and affiliations in different countries as progressives, liberals, Fascists, nationalists or war veterans. Instinctively separated from the manual workers yet not quite identified with their same capitalistic employers, their

growing class consciousness and sense of strategic position make them more or less able to turn the scale between capitalism and laborism. The strength of this group in the ripening stages of capitalism cannot be measured by inadequate occupational statistics, for although they are evidently a minority yet under capable leadership they are able to command concessions or to dominate situations.

Somewhat similar to the nationalistic is the religious or ethical appeal, which deters wage earners or softens their aggressive labor movements. The Catholic church in closer contact with manual workers and backed by the papal encyclicals, which have taken over the doctrines of the earlier Christian socialism, has devoted itself with varying success to this cause. The Protestant churches, by historic tradition the inspiration of individualistic capitalism, have not been able to appeal to the new class of wage earners; while the Russian Orthodox church, long since the acknowledged instrument of czarism, has apparently lost its hold in the face of a revolutionary materialism. Even the Catholic unions of Germany have begun to make common cause with the socialistic unions.

It is difficult to give due weight to the ethical motives which have descended from the religious training of the past. Perhaps it should be said that the ethical appeal is becoming an economic appeal and takes such form as "business ethics," "trade union ethics," "communist ethics," which confessedly spring from economic conflicts with the rise of various forms of concerted action designed to bring under control the individual behavior deemed contrary to a common interest. While the earlier guilds and unions had their patron saints, these modern associations make similar ethical rules unsanctified by religion.

To counteract the improvidence of an unpropertied class many devices for thrift and savings have been instituted. It is evident, however, that wage earners as such only meagerly or temporarily participate in them. The patrons of savings banks in the United States derive their incomes largely from sources other than wages. Cooperative home ownership, known in the United States as building and loan associations, is an effort to obtain what for the wage earner is the dubious advantage of tying himself bodily to a precarious investment, when mobility is of more substantial advantage in obtaining employment and higher wages.

Distressed by this mobility and improvidence

employers attempt with scant success and to a limited extent to set up schemes of profit sharing, stock ownership, home ownership, garden cities, credit unions—a sort of compulsory thrift because preference is given to those employees who participate. In the beginnings of unemployment insurance agitation this compulsory thrift was imposed upon wage earners by legislation, requiring them to contribute to funds when employed in order to provide part wages when unemployed. Most of these schemes turn out to be inadequate and even productive of class feeling when the wage earners reach a substantial proportion of the population. It is indeed somewhat of a mockery for propertied classes to endeavor to impose on the unpropertied and potentially unemployed the older ideas of thrift carried over from the infancy of capitalism.

England was the first nation to embark on that great process of economic change which brought about modern capitalism, and its labor movement was the first to have a gradually growing but distinct working class viewpoint. The coming of industrialism resulted at first in various movements of protest, which expressed themselves in such ways as the machine breaking of the Luddite rioters and in demands for land reform, so that this working class, essentially rural in origin, might have an opportunity to return to the land and to escape from the evils of industrialism. The collapse of the Chartist agitation in 1848 marked a new period in the English labor movement, in which industrialism became accepted as an established fact; the workers no longer looked to some ultimate escape from the factory system but sought merely to ameliorate their position in that system. Aided by a period of prosperity, which came to be known as the "golden age of English capitalism," trade union organization developed after 1850, following the so-called new model introduced into the building trades, and spread to other fields through the activity and influence of an important group of trade union leaders known as The Junta. The new model unionism was a craft unionism which believed in more thorough centralization in union organization and greater cooperation with the employers and disavowed any rashly militant strike policy. With prosperity and better tactics it flourished until the depression in the late 1870's, which revealed the limitations of a type of unionism restricted to skilled workers.

The late 1880's therefore saw a development

of large industrial unions of unskilled workers among the miners, dockers, gas workers and general laborers. This "new unionism" was led by a group of socialists and was more class conscious than the earlier unionism. But despite the efforts of Keir Hardie and the Independent Labour party which he organized in 1893 the idea of independent political action by labor in contrast to the policy of supporting left wing Liberal candidates, known as Lib-Labs, was not abandoned by the trade unions as a whole until 1899. With the organization in that year of the Labour Representation Committee, which became the Labour party in 1906, the English labor movement secured a political wing which contrary to the situation on the continent was practically created and actually dominated by the trade unions. The Labour party was Fabian and not Marxian in its social philosophy and did not officially accept socialism as its philosophy and program until 1918. Contrary to the situation in Germany, where the trade unions had to struggle to escape from the domination of the Social Democratic party, the Labour party in England has struggled, although as yet unsuccessfully, to establish its independence of the trade unions.

These two essentially British types of labor activity—business unionism and a reformist non-revolutionary labor party—were challenged before the World War by a type of labor philosophy which came from France. Syndicalism with its opposition to both political action and collective bargaining and its emphasis on revolution through a general strike took a strong hold on the British labor movement before the war, as it did in the United States, Australia and New Zealand at the same time. In a country unaccustomed to revolutions, such as England, a modified syndicalism under the name of guild socialism pictured an economic organization of the state with the business man eliminated but with the technical engineers sharing power equally with the workers in a new constitutional government. The transition to the new system was to come peacefully and gradually through the extension of workers' control in the shops. This served to modify the English brand of socialism, which now began to look upon government ownership as dictatorship and to take over the guild ideas of an economic parliament. By the end of the war the movement had grown so strong that large scale experiments in its application, especially in the field of building, were attempted. The failure of these involved the dis-

integration and disappearance of the guild socialist movement.

The post-war labor movement in England has been seriously hampered by the economic stagnation from which the country has suffered since 1920. One characteristic result of that situation has been the decline in union membership and the weakened power of the unions. The unions have made strenuous efforts to resist concerted downward movements in wages and conditions of work. The most heroic of these efforts, unique in modern British labor history, was the general strike of 1926, called by the Trades Union Congress to protect the miners from an attack on their conditions of work, an attack which the congress regarded as a forerunner to a general attempt to lower the standard of living. The general strike idea had haunted the working class movement ever since the days of syndicalism and labor unrest before the war. But in the minds of the English workers it was by no means an essentially revolutionary idea. The basis of its appeal was a feeling that all the workers were subject to the same changes and that all must stand together in meeting them. The failure of the strike resulted in the passage of the Trades Disputes and Trades Union Act of 1927, which declared illegal all sympathetic strikes; in a strengthening of the Labour party at the expense of the trade unions; and in an increased emphasis on class collaboration as represented by the Mond-Turner conferences, which promised far reaching changes in English industrial relations until the opposition of the conservative employers nullified the work of the conferences.

The rapid rise of the Labour party to the point where it first displaced the Liberal party and twice (1923-24 and 1929-31) formed minority governments has been one of the outstanding features of the post-war British labor movement. The party has shown an inability and an unwillingness to use its strength to introduce definitely socialist measures. The crushing defeat which it suffered in 1931 was of some value in definitely eliminating from it the party elements which were essentially liberal rather than socialistic (see LABOR PARTIES).

Karl Marx' socialism was based on the factory system of England and was inapplicable to the merchant capitalism of the continent. Except for a brief spell of union organization after the Revolution of 1848 there was no labor movement in Germany until Ferdinand Lassalle issued his *Open Letter* in 1863. Lassalle's program

was quite different from that of Marx. Marx favored confining labor organization mainly to the economic field, proposing an international organization of labor to overthrow capitalism in all countries. Lassalle, on the other hand, sought to develop a political organization which would obtain universal suffrage in Germany for labor and then through control of the state subsidize workers' producers' cooperatives by state credit and taxation. His program ruled out trade unions and voluntary cooperatives, because each would be ineffective on account of the "iron law of wages."

Following these two divergent philosophies there developed in Germany a Lassallean political Allgemeiner Deutscher Arbeiterschaftsverband and a Marxian group founded by Bebel and Wilhelm Liebknecht in 1868. In 1875 these two combined to form the German Social Democratic party; the consolidation permitted the unification at the same time of the socialist trade unions. The Lassallean philosophy, however, dominated the German labor movement at the time. The antisocialist law of 1878 outlawed all kinds of unionism; when that law was discontinued in 1890, Marx' socialism was the dominant philosophy of the labor movement.

The trade unions, some of which had managed to exist after 1878 despite the restrictions and many more of which were organized after 1890, were subservient to the growing Social Democratic party. Under the leadership of Carl Legien, however, these unions gradually developed a philosophy and technique of their own. By 1906 they had obtained equal status with the Social Democratic party; and the check suffered by the latter in the election of 1907 solidified the position of the unions and converted the Social Democratic party, at least in practise, from a Marxian to a revisionist policy.

This continued until the World War, when both the trade unions and the political party supported the government. Unionism gained in influence and status during the war. It obtained joint boards of employers and employees and representatives on many government boards. Its crowning success came with the revolution in 1918 and the incorporation in the republican constitution of the status obtained by the trade unions in 1918 through a national agreement with the employers which granted full recognition; abandonment of "yellow" or company unions; abolition of discriminations against union members; the eight-hour day; shop committees; joint conciliation boards and joint adminis-

tration of employment bureaus. The power of the unions showed itself in their ability to defeat by a mass general strike an attempted reactionary *Putsch* in 1920. The development of a strong Communist party in Germany out of the Independent Socialist party, which broke away from the Social Democratic party in 1916 over the issue of supporting the war, has split the labor movement in Germany. The universal opposition between communists and socialists has been aggravated in Germany by the memory of the bloody repression of the Spartacist revolt of 1919 by the socialist controlled government. The Social Democratic party, which despite the fact that the communist movement shows greater political strength in Germany than in any other country outside of Russia was the largest single party in Germany until the election of July, 1932, has turned to the Catholic Center party, the Liberal Democratic party and the People's party for coalitions. Since 1929 the National Socialists, or Fascists, under Hitler have become the most formidable opponents of both unions and Social Democrats. Predominantly a middle class movement, Hitlerism has attracted many workers disappointed with the results of the revolution and has enlisted the support of many large industrialists and landlords who hope to establish a dictatorship to protect their profits and rents. The growth of this movement, with its avowed purpose of suppressing trade unions, socialists and communists, constitutes the most serious threat which the German labor movement has faced since 1878.

The labor movement in France before the World War presented a definite contrast to the English and German movements of the same period. Union organization in France dates practically from 1884, when the most important changes were made in the restrictive laws concerning labor organizations. But a definite subserviency to the socialist movement, itself divided into a number of groups, hampered the functioning of the unions. The organization of the *Confédération Générale du Travail* in 1895 initiated the development of a peculiar syndicalist labor movement, which disavowed the political actionists and the trade unionists. Its philosophy was formulated by Sorel at the beginning of the twentieth century. Its weapon was the sudden or general strike, whose object or tactics was to take over the factories or farms by "direct action"; to repudiate collective bargaining, or "collaboration with capitalism," which had been the goal of trade unionism; to have the fac-

tories or farms operated by an idealized working man turned business man; and to displace the state by an economic cooperation of "production for use" and not for profit. This philosophy of working men who were disillusioned by politicians disrupted the socialists and spread to many countries; it became the dominant characteristic of the labor movements in the Mediterranean countries.

The amalgamation in 1902 of the *Fédération des Bourses du Travail* and the *Confédération Générale du Travail* unified the economic side of the labor movement in France, but it resisted all attempts of the socialists to control it and in 1906 after a series of successful militant strikes it adopted in the *Charte d'Amiens* a definite statement of political neutrality. The coming of the war, however, shattered the non-political antimilitarist principles of the *Confédération Générale du Travail*. It supported the war, permitted its leaders to serve in the cabinets of the *Union Sacrée* and with rising prices and official government encouragement given in return for labor's support of the war doubled the trade union membership at the same time that it substituted the tactics of regular trade unionism for those of syndicalism. Superficially it still adheres to the *Charte d'Amiens*, but in practise since the failure of the syndicalist general strike of 1920 the French labor movement has tended more and more to follow the tactics of western European unionism. Both collective bargaining and legislation have been employed by the unions since the war.

Although the *Confédération Générale du Travail* remains the dominant economic group, the French Communists, organized in a separate union as the *Confédération Générale du Travail Unitaire*, have exercised on the industrial field a far greater influence in France than in any other capitalistic country. Catholic unions have also become significant since the war. A fourth group, syndicalist in nature, is insignificant. The best organized industries are those which are either semipublic, such as mines or railways, or entirely owned and operated by the government. Except in large centers the workers in private industry are largely unorganized, although they are often class conscious in the continental radical sense.

Despite the fact that France was the leader in antipolitical syndicalism socialism always has been influential with the French working man. As early as the general election of 1893

the socialists had fifty deputies and the majority control in many municipalities. Nationally and officially the Socialist party endorses the *Confédération Générale du Travail* and the whole cooperative movement. The C. G. T., which relies more and more on legislation and on government aid, finds that it must take an active part in politics. In doing so it definitely regards the Communists and the right parties as hostile and in practise restricts its political neutrality to the Socialists and the bourgeois parties of the left. The prevailing sentiment, however, in the higher circles of the C. G. T. is that the Socialist party is controlled by extremists who are not in sufficient contact with the trade union movement. On many questions, such as the capitalistic "rationalization" of industry, there is a difference of opinion. The Socialist party is lukewarm if not hostile to it, whereas the C. G. T. is wholeheartedly in favor of it. In accordance with the non-political tradition of French unionism even the communist unions are not officially related to the Communist party although they are in practise.

Unlike England, the United States and Germany, where capitalism developed at so rapid a pace that workers were unable even in groups to embark on production, in France capitalism developed at a comparatively moderate pace and producers' cooperatives of workers exist side by side with similar enterprises of capitalists. But by the end of the nineteenth century as a result of the increasing difficulty in obtaining credit and the growth of class consciousness consumers' cooperation had outdistanced that of producers. Since the war cooperation has moved in step with the newer economic development of France away from the isolated neighborhood cooperative to the chain store type of merchandising, with centralization in buying and with factories owned by the wholesale cooperatives. The *Banque des Coopératives de France* became the central financial organ for the movement. From its beginning the cooperative movement had been aided by the French state. It is the best customer of producers' cooperatives and in legislation has favored them against private competitors by the decree that where the bid is the same the contract goes to the cooperative.

The Italian labor movement prior to the World War had both a political and an economic wing. The former was split into three factions: the reformists, inspired by the revisionism of Bernstein; the "integratists," led by Ferri, who re-

sembled the German Social Democrats of that period; and the syndicalists under Labriola, who severed their connection with the Socialist party in 1907 and who did not become an important group until the war. The reformists split with the Socialist party in 1912 because of their desire for war; they became a part of the Italian nationalist movement which the war with Turkey over Tripoli in 1911 had stimulated. The divisions in the trade union movement followed those in the political movement. There were four different organizations: the Union of Industrial Workers, the Union of Agricultural Laborers, Chambers of Labor and the Catholic Union. The last was a small group and opposed to the other three (socialist) organizations.

The labor movement was from the beginning concentrated in the north. In the region of the Po river there developed a type of capitalistic farming with hired laborers and among these, but especially among the urban workers, socialism flourished. The movement was revolutionary to such an extent that the government under Giolitti prior to and during the World War was forced to compromise its previously conservative position in the interest of maintaining peace. This policy (*trasformismo*), by which the government tried to be all things to all men, prevailed down to the Fascist Revolution.

During the war the Socialists under Ferri remained to a large extent pacifistic. When the peace treaties gave Italy little in reward for her participation in the war on the side of the Allies, the Socialists had an important talking point; and the closing down of the war industries, the rise in the cost of living due to the rise in foreign exchanges, and the example of the Russian Revolution all contributed to turn the whole trend of labor toward revolution. This took the form of syndicalism, general strikes and occupation of industries and landed estates by the workers.

The movement soon failed, however, partly as a result of a lack of plan of organization, an inability to obtain credit and to market products but primarily because of the development of a well organized terroristic strike breaking organization in the form of Mussolini's Fascists. The apparent purpose of the Fascist reign of terror was the suppression of trade union, cooperative and socialist organizations and it was for this reason that the movement secured financial support from the manufacturers, bankers and landlords. The establishment of Fascism was gradual; by 1925 it was fairly

well completed. In the following year the voluntary syndicates and trade unions were replaced by a nation wide compulsory scheme of syndicate organizations, which alone were recognized as legal. Four main classes of syndicates were set up: capitalists, agriculturalists, laborers and professional men. Each person in order to carry on a business or get a job must belong to one of these syndicates and pay dues to it. The syndicates, organized on a local, regional and national basis, with officers approved by the dictator, have made rules fixing wages and even output. Although the employers and employees were at first separately organized, the national Fascist federations of employers and employees were later combined into corporations.

Fascism embodies the negation of the class war; its essential principle is class collaboration and the substitution for the struggle between classes within the nation of the world struggle between nations. The interest of the workers, according to Fascist principles, ends at the national boundary; except for the quasi-governmental International Labor Organization no connections are permitted between labor organizations in Italy and similar organizations in other countries. Strikes and lockouts are forbidden under the law of 1926, which also provides for giving legal validity to all labor contracts. To enforce and interpret the contracts a system of labor courts is provided.

Class collaboration is therefore the supreme doctrine of Fascism. This is illustrated by the Labor Charter of 1927, which states that there is no conflict of interests between the various classes; that they work together for the greatest production and for the welfare of the nation; that private initiative is the most useful instrument for the welfare of the nation; and that the state interferes in production only where private initiative is lacking. While theoretically the Fascist state is formed out of functional economic groups organized into syndicates and corporations, economic groups are not paramount; instead the state is controlled by a relatively small political group organized on a military basis representing no economic class but recruited from the petty capitalists.

In Soviet Russia the situation is quite different. Here the labor movement is perhaps younger than that of any other important European country. For a longer period of time than elsewhere in Europe trade unions, except bogus organizations formed and controlled by the police, were illegal in Russia. Genuine union or-

ganizations nevertheless did develop despite the restrictions; particularly among the printers. The revolution of 1905 brought a promise of the legalization of trade unions, which resulted in a remarkable growth in union organization. But governmental control of these unions was still strong and contributed to the success of a drive by the employers which materially weakened the union movement. Russia entered the World War with a weak trade union movement; and when the revolution came, it was the social philosophy of the revolutionary socialist and communist parties which dominated rather than any wage conscious unionism.

The communist revolution was almost strictly an urban and wage earners' revolution based on the soviets, which were merely the central labor unions of the locality, a kind of organization which has arisen in all countries at periods when unionism is just beginning. Such were the trade unions of England and America in the decade of the 1830's; the soviets had already appeared in Russia in the short revolution of 1905. Springing up again after the February revolution in 1917 they represented a great variety of organizations and included "intellectuals" of various sorts. When the defeated veterans returned to St. Petersburg they were admitted to the soviets, which then became Workers' and Soldiers' Councils. Lenin and Trotsky advocated and effected the exclusion from these new soviets of the intellectuals and of those who, like the Mensheviks, favored trade union agreements and collaboration with employers; the soviets were then converted into proletarian organizations bent upon the destruction of the capitalist system.

It is an important fact, as Calvin Hoover has noted, that whereas competition for wealth is paramount in a capitalist country, competition for political power within the Communist party has taken its place in the Soviet Union. This competition really means a competition between political policies and has centered chiefly around the question of how far private or communist ownership of industry and agriculture may be permitted. The struggle on this point still continues but under the administration of Stalin there is a strong drive toward the entire prohibition of all private ownership and private trading. The labor movement of Russia has thus culminated in the most extreme doctrine of a classless government controlled solely by the class of propertyless wage earners.

Where Fascism definitely limited the activity

of its labor movement to the boundaries of Italy, Russian communism started from the principle that the revolution must be made world wide and must be continued until all the world has accepted communism. But the force of internal conditions and the stubborn resistance of capitalists in Germany and England as well as the development of Fascism in Italy and Germany have forced the Soviet Union to abandon the principle of world revolution in return for an opportunity to build its own national commonwealth. It now seeks world peace and feels that engaged as it is in the process of "building socialism" it would be the principal sufferer from a war. The political Communist International and the economic Red International of Labor Unions are still in existence and still function, but their revolutionary activities have been considerably circumscribed by the internal needs of Soviet Russia.

Fascism and communism, antithetical in their ultimate ideals and in their standards of value, present certain striking similarities in their practical consequences for the labor movement. The Soviet Union too has abolished the class war within the nation, not by the submergence of existing class interests but by an attempt to eliminate all classes. The dictatorship of the proletariat embodying the concept of a continuation of other classes is to be eliminated when the profit psychology has been eliminated—when all the people are workers and none lives by interest, rents or profits. In both Italy and Russia the edge of the class struggle has been dulled by government control of the policy and administration of the former voluntary trade unions and cooperatives. This has been done by the simple device of securing the appointment of members of the Fascist or Communist parties as officers of these associations. In addition in both countries the function of the trade unions has ceased to consist of representing the workers in conflicts with employers, and they now act as agencies for increased efficiency and productivity. In both cases they have become instruments for enforcing governmental policy.

In addition to the emergence of communism and Fascism, which have affected the form and functioning of the labor movement not only in the countries of their origin but in other countries as well, one of the most important developments of the post-war world has been the capitalism of the United States. Here the economic method of labor action has predominated over

both the political and the cooperative, because the overlordship of the aristocratic state and the church has been eliminated for more than one hundred years. The electoral suffrage began to be extended to the wage earners in the decade of the 1820's, full fifty years in advance of the countries of Europe. In the United States capitalism has had its greatest freedom of development; both capitalism and labor organizations have followed along clear cut economic lines.

Although American union activity has been essentially economic—directly through trade unions—there have been periods when labor has turned to other lines of action. As early as the end of the 1820's labor with its newly acquired franchise turned to political action to secure its ends. Parties which were distinctly labor developed in various eastern cities, but their practical proposals were stolen by other parties and they were left with the advocacy of radical measures which brought them into disrepute. In the period before the 1850's labor again turned to legislation, although not through independent action; such measures as public education, mechanics' lien laws and homestead laws received the general support of labor movements. With the organization of strong national trade unions after 1850 labor once more concentrated upon economic action. But not until the 1890's did this business unionism finally win out over the type of labor program which had been proposed by various early labor organizations in the United States, ending with the Knights of Labor, and which had attempted by voluntary association to substitute cooperation and self-employment for capitalistic employment on the democratic principle of one man one vote instead of the capitalistic principle of one share one vote. These organizations frequently broke down on the one issue of electing managers by popular vote. Or if they succeeded they passed over into capitalistic organizations by closing the doors to new members and hiring non-members for wages. The experience of the molders and the coopers with producers' co-operation ended this phase of the American labor movement, although in 1919 the railroad unions offered to assume partial control of the railways under the Plumb Plan.

American labor activity has not entirely eschewed political action, but it has refused to enter the political arena as an independent party or to cooperate in the formation of an independent labor party. Except for 1924, when

the American Federation of Labor supported La Follette for president, the official labor movement has tended to adopt the policy of supporting now one party, now the other, according to the benefits expected from the one or the other. This policy of rewarding friends and punishing enemies has been employed, however, primarily to insure the freedom of action of trade unions on the economic field and to secure the passage of certain measures which could not be attained through union action, such as workmen's compensation and immigration restriction. As for substantive contributions to the direct well being of the workers, such as social insurance laws, the American Federation of Labor has consistently opposed their passage, believing that these benefits should be provided or secured by the unions, thereby making the union member dependent upon his union only and not upon his employer or the government.

In line with its conservative non-political policy the American Federation of Labor has carefully and consistently avoided any socialist or communist affiliations and has even been prominent among the attackers of these social philosophies. Except for the year 1895, when the socialist sympathizers captured the presidency of the A. F. of L. and unseated Gompers, left wing groups have been unable to make any appreciable headway with the organization. Both boring from within and dual unionism have failed to make much impression on the movement as a whole, although individual unions, such as the International Ladies' Garment Workers Union, have been severely crippled by internecine fights between the communists and other members. Some unions and some sections have either openly supported socialists or communists or have actively participated in the formation of labor parties; but the movement as a whole has carefully avoided any such action and even in the depression election of 1932 the American Federation of Labor, although disappointed with the labor planks in the platforms of the two major parties, refused to support either the socialists or the communists.

Unionism in America received a tremendous impetus through the high prices and the prosperity of the war years. In the ensuing periods, however, membership declined—not only in the depression of 1920–21 but also in the prosperity period which lasted until 1929. The trade unions which do exist in America are still powerful—possibly more so than those in Europe. But capitalism in the United States seems to



have developed new methods of resistance to the spread of unionism. Diffusion of corporate ownership, labor legislation and voluntary concessions by giant corporations have apparently rendered unionism unnecessary to many of the workers. Large scale business has been forestalling unionism by providing for labor as much as or more than the unions offer. Another obstacle to the growth of a strong labor movement is the important system of promotion, which still offers outlets for members of the working class and hampers the development of class feeling.

Important contributing factors to the limited extent and the non-radical nature of American unionism were the areas of free land available in the west until the end of the nineteenth century and the successive waves of immigration, which complicated the problem of union organization by introducing racial and national antagonisms augmented by language difficulties. In the period before the World War it was relatively easy for large employers to replace groups which had learned to think collectively by new immigrants unaccustomed to the philosophy of unionism, anxious to get a start in a new country, pleased at the relatively high wages and unapproachable by the spokesmen of the older groups because of language difficulties. As fast as one group rose out of this state it was replaced by a new group. With the practical exclusion of immigrants after the war the problem of language barriers became less important. Regional shifts, such as that of the textile industry to the unorganized south, present new problems and the presence of a large Negro group, which the rank and file of organized labor has thus far almost consistently refused to admit, constitutes a perennial strike breaking menace, which has already given rise to such fundamentally economic outbreaks as the race riots in East St. Louis in 1917.

These two elements of free land and immigration, which would seem to be the common characteristic of new countries, were not present in the unique Australian labor movement. Faced from the beginning with a concentration and monopolization of landownership and consequent difficulty of rising beyond his status as a wage earner the Australian laborer has always been conscious of a scarcity of opportunity. This factor together with a homogeneity of culture arising from a common English ancestry, an early attainment of universal suffrage and the realization through experience that the government

serves the "master class" in any industrial disputes has led labor in Australia to resort to independent political action. At the close of the nineteenth century labor with the acquiescence or support of other groups moved for compulsory arbitration after the failure of an intense opposition to the strikes of the miners, shearers and maritime workers.

The Australian Labour party, which includes the parties of the various states, has steadily broadened its platform in the interest of the trade unions which dominate it. Having established compulsory arbitration in the commonwealth, New South Wales, Queensland, South Australia and Western Australia, it has attempted to establish union preference in the courts of arbitration; to maintain the self-sufficiency of Australian industry by high tariffs; and to achieve socialization of industry by a constitutional utilization of the federal, state and municipal governments. While no progress has been made in instituting a system of union preference in the courts, high tariffs have been effected and Australia has socialized her industry to a greater degree than any other capitalistic country in the world. With the support of the party trade unionism in Australia has steadily been strengthened, so that in 1931 about one half of all employees were members of unions. The courts of arbitration have been responsible for much of this growth, because they recognize as parties to disputes only those workers who are organized and they do not permit employers to discriminate against union members.

Because Australian capitalism has always been employer capitalism, unionism in Australia has tended to develop along industrial lines. An example of this is the Australian Workers' Union, comprising for the most part shearers and other agricultural workers, which is the largest and perhaps strongest union in Australia and constitutes one sixth of the total union membership. The Australian Council of Trade Unions, representing the bulk of union membership outside the Australian Workers' Union, has consistently urged the organization of labor along industrial lines and the formation of one big union.

But the characteristic feature of Australian unionism has been the creation of a "White Australia" by exclusion of all races and nationalities except the Anglo-Saxon. In many countries the division along racial and national lines has been more important than division along

economic lines. In countries where a single nationality predominates, such as Germany, England and Australia, race consciousness supports the labor movement and trade unions and political parties are more easily formed.

It is not surprising that when capitalist organization becomes international, the labor movement follows. This was a basic fact which Marx recognized in aiding the organization of the International Working Men's Association in 1864. But Marx' organization preceded by half a century the banker capitalism which is to be considered as the real beginning of international capitalism.

The international labor movement is at present made up of over seventy organizations divided into various systems of "tendencies"—socialist, communist, syndicalist and Christian—in addition to the quasi-governmental International Labor Organization (*q.v.*). Of these the International Federation of Trade Unions (or Amsterdam International, as it is known from the location of its central offices, which, however, were moved to Berlin after 1930) is still the largest and most coherent despite its decline in membership since 1921. It is composed of twenty-seven international trade secretariats made up of trade unions of the socialist type, is allied with the political Labor and Socialist (Second) International and cooperates with the International Labor Organization. Its membership of over 13,000,000 includes a majority of the trade unionists of Europe and some outside of Europe, although the American Federation of Labor is not represented. The federation withdrew in 1920 because, according to Gompers, the International had "become an international political body with sovietism as its logical result and a revolutionary program for 'socialization' and 'communism'." Some American national trade union bodies, however, continue to belong to the international secretariat for their industry.

The trend of Amsterdam is to merge the socialist ideal with the ideas of "workers' control" and of industrial democracy; its outlook is reformist internationalism, which regards the transition to a socialist society as a gradual and slow process. It conceives its main task to be one of promoting economic and social reforms under capitalism. The twenty-seven secretariats are little more than information bureaus and discussion centers. On the other hand, the need for international action is causing the miners' secretariat to support regulation of

the mining industry through an international commission. The metal workers, faced by the growth of international cartels, are backing a demand for an international cartel office under the League of Nations.

The communist Red International of Labor Unions was established in 1921 as a successor to the Provisional Council of Red Trade Unions, which was organized by the Third International in 1920 to break up the Amsterdam International with its definite socialist affiliation. The Red International of Labor Unions is organically connected with the Third International. The great majority of its membership is of course located in Russia.

The Christian trade unions which developed after the issuance of the papal encyclical *De rerum novarum* in 1891 organized an International Secretariat of Christian Trade Unions in 1908, which before the World War reached a membership of over half a million, more than two thirds of which was located in Germany. The war interrupted its activities, as it did those of the other labor internationals. It was reconstituted after the war and now has a membership of about a million and a half. Essentially its purpose is to try to allay industrial unrest and to establish economic justice on Christian principles.

The anarchist International Working Men's Association, which adopted the same name as Marx' First International as a sign of its claim to spiritual descent from that body, is the least important of the international organizations, with a membership of only a few hundred thousand.

The labor movement is thus seen to be amazingly complicated and diverse. There is scarcely a single principle or permanent trend underlying it except the aggressive principle of encroaching upon the domain of capitalism. Even this principle is in abeyance during a war for national survival or conquest. The movement in one country is not comparable with the movement in another country, and even in the same country it changes with transformations in the form and power of capitalism and in all the social movements.

Within the movement itself there are many conflicting trends, which weaken its aggressiveness; these range all the way from communism, syndicalism and unionism to cooperation, and they are broken up again into many different forms and temporary combinations. In some countries one or more of these conflicting internal movements rises to temporary predomi-

nance, while in other countries quite the opposite movements may predominate.

The modern world wide extension of markets together with the emergence of international combinations has correspondingly expanded the scope of the labor movement, which, however, has lost ground relatively to world wide capitalism. Racial and national differences have made the movement in one country different from that in another country where one language and one race may tend to effect an automatic solidarity. Differences in wages and standards of living have had an equally important part in the fluctuations of labor movements, and the cycles of full employment and unemployment have weakened them more than any other factor. Nevertheless, with the rapid improvements in technology, with the transition from an agricultural to an urban population and with the corresponding shift from small property owners to propertyless wage earners the labor movement by mere weight of numbers becomes a major problem of western civilization.

JOHN R. COMMONS

See: LABOR; TRADE UNIONS; COOPERATION; LABOR PARTIES; LABOR BANKING; LABOR LEGISLATION AND LAW; WORKERS' EDUCATION; INDUSTRIAL RELATIONS; COLLECTIVE BARGAINING; BARGAINING POWER; TRADE AGREEMENTS; GENERAL STRIKE; HOURS OF LABOR; LABOR, METHODS OF REMUNERATION FOR; UNEMPLOYMENT; STANDARDS OF LIVING; SOCIAL INSURANCE; JOURNEMEN'S SOCIETIES; CHRISTIAN LABOR UNIONS; AMERICAN FEDERATION OF LABOR; TRADES UNION CONGRESS, BRITISH; CONFÉDÉRATION GÉNÉRALE DU TRAVAIL; DUAL UNIONISM; INTERNATIONAL LABOR ORGANIZATION; CHARTISM; ANARCHISM; SYNDICALISM; SOCIALISM; COMMUNISM; GUILD SOCIALISM; FASCISM; SOCIALIST PARTIES; COMMUNIST PARTIES; CLASS; CLASS STRUGGLE; PROLETARIAT; REVOLUTION AND COUNTER-REVOLUTION; LABOR-CAPITAL CO-OPERATION.

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See also bibliographies on TRADE UNIONS; LABOR PARTIES; SOCIALISM; COMMUNIST PARTIES.

## LABOR PARTIES

GENERAL.....	J. B. S. HARDMAN
GREAT BRITAIN.....	H. N. BRAILSFORD
BRITISH DOMINIONS.....	HERBERT HEATON
UNITED STATES.....	J. B. S. HARDMAN

GENERAL. In popular usage the term labor party serves to cover labor associations organized to ameliorate the lot of working people by political and legislative action as distinguished from capitalist reform parties on the one hand, and socialist or communist parties on the other. Within that usage the term further denotes a membership composed primarily, if not exclusively, of working people and a pragmatic eclecticism of program, free from commitments to any integrated social philosophy.

More accurately, existing labor parties may be divided into three categories according to their organization and membership. First, there is the English type, consisting primarily of trade unions which affiliate with the labor party en bloc and vote as units. In addition individual union members and others, whether or not they are workers, may affiliate through local labor or socialist parties. The Labour party of great Britain has ordinarily embodied the largest degree of direct trade union affiliation of any labor party; in Australia also trade union members constitute the great bulk of party membership. The second is the Belgian type, a permanent triple alliance of the Socialist party, the trade unions and the cooperatives, which most closely approximates a formal socialist party with respect to acceptance of the theoretical tenets of socialism. The Socialist party maintains an autonomous existence within the Belgian Labor party not dissimilar to that which the Independent Labour party held within the British Labour party until 1932. Third, there is the American type, which finds organized expression in only one state but appears in several other states in the form of more or less significant local parties. Such parties consist neither of organized trade unions nor overwhelmingly of individual trade unionists but of persons of diverse social and economic origins. They view their own efforts as but initial steps toward the inevitable formation of a labor party of the country's trade unions. Wherever they have attained a measure of success or maintained a more than passing existence these American attempts have been dominated by a farmers' or agrarian outlook.

In their basic attitudes toward the social

order the functioning labor parties are divisible into two groups: European and American. Nearly all the former are at present at least theoretically anticapitalist, while the latter are at most anti old parties or anti big interests. Early attempts to form labor parties in the United States were outspokenly radical, however, even though the radicalism was of an agricultural brand; at a time when the intellectual remains of Chartism were being entirely absorbed by avowedly socialist groups and English laborism was tamely evolving into Liberal-Labourism, an active labor radicalism which sought political expression still existed in the United States. The organizations of the 1870's bore a socialist stamp: the International Working Men's Association, the First Socialist International, stood guard over their activities, and such men as William H. Sylvis and F. A. Sorge maintained an active correspondence with Marx and Engels.

The theoretical distinction between the typical social democratic or communist party on the one hand and a labor party on the other is that the former rest upon a social creed or ideology while the latter is based merely upon a social class. The socialist or the communist claim to labor representation rests upon the ability of the given party to generalize and effectively to voice presumably existing working class aspirations. The claim of a labor party would seem to need no substantiation, for its very appearance on the scene represents its credentials. The appealing attractiveness of a labor party in the eyes of workers seems to rest upon simplicity of performance—"act in politics as you act in the factory"—as well as upon its implied capacity for action, since a labor party has direct access to labor's organized power through the constituent trade union bodies.

The play of political and social forces has conditioned the emergence of socialist or creed parties in certain countries and of labor or class parties in others. In the light of these circumstances three major types of relations between the trade unions and the political movements stand out in the experiences of European labor. In Germany, the other central European

countries and the Scandinavian states there developed a parallelism of the economic and the political organizations. Their essential equality as well as the mutualism of immediate and ultimate interests was considered a matter of course. The Socialist party enjoyed acknowledged leadership in political matters but the trade unions steadily if tacitly materialized and extended an "encroaching control over the whole movement." The battles for universal and direct franchise and democratic rights generally and for social and labor legislation kept the two divisions of organized labor in a working relationship.

In France, which is industrialized only in certain sections, developments took another course. The economic hollowness of most of the political gains of the French Revolution, the ruthless suppression of the Commune and the frequent cases of "treason of the intellectuals" who used labor's readiness to respond to radical political appeals as stepping stones to personal parliamentary careers caused the development of a strong antipathy to political action and of anarchistic tendencies in large sections of the proletariat, especially in Paris, where small shops and petty industry rather than large scale establishments flourished. Trade unions were not assured of legal status until 1884, and trade unionism or syndicalism therefore acquired a revolutionary glamour. The rift between the socialists and the trade unions grew. The local central labor councils or exchanges (*bourses du travail*), under direct anarchist leadership, housed in buildings erected out of municipal funds and in other ways publicly supported, became centers of opposition to party politics, mainly directed against the socialist party. This trend was essentially similar to the political course of the American Federation of Labor under Gompers; it is significant that when Gompers visited Paris in 1909 the French revolutionary syndicalists received him as their very own. In time, however, a partial *entente cordiale* was established between the party and the unions under the compelling influence of the moderate socialist leader Jean Jaurès as well as of the big reformist unions which were interested in legislation—including those in the industrialized north, in the textile industry and in the railroad industry, partly under government control. A similar relation with certain variations existed in the other Latin countries.

In Great Britain two basic circumstances pre-

vented the formation of a strong socialist movement. The struggle for the franchise was virtually won as early as 1867, when the Reform Bill gave voting rights to city workers. In that struggle the Whigs, or Liberals, supported labor. The anti-union combination laws were repealed in 1871; and an effectively built trade union movement enabled at least the upper strata, the skilled workers, to secure some benefits from the preferred position which British capitalism enjoyed in the markets of the world. The major causes which generally aided the development of the continental socialist parties—the fight for suffrage, the struggle for social and labor legislation and the economic misery of the workers—did not operate in quite the same way in the United Kingdom. Here the two-party political system and the role of relative economic progressivism which the Liberals, the party of expanding finance and industrial capital, played against the party of the land magnates, the Tories, tended to keep labor indifferent to political socialism, with the result that while many doctrinaire and sectarian socialist groups developed, no substantial socialist party arose. Only when unskilled labor rose to organized influence, beginning with the dock workers' movement, was the stage set for the active and independent entrance of labor into the political arena. Reactionary decisions of the law courts, notably the *Taff Vale* decision in 1901, hastened the progress of the movement. But only by relegating its socialist ambitions to the background was the Independent Labour party able to make itself a force in the acceleration of the evolutionary course which resulted in the formation of the Labour party.

Except for the Belgian Labor party, which in a practical sense merely represents the German system of close cooperation between socialism and trade unionism developed to the point of federation, pre-war political labor activity took two forms: socialist or social democratic partyism, recognized to a greater or lesser degree by industrially organized labor, and labor partyism, based on direct trade union affiliation as in the United Kingdom and the dominions, especially the Irish Free State, Australia and New Zealand. The distinction between the two rests upon the degree of control exercised by the trade union movement and the political party. Even the maximal acceptance by the Social Democracy of the trade union viewpoint in all matters of policy and of theory as affected by it at no time brings the party to

the point of being a mere "labor caucus" of the trade union movement, as the British Labour party has always been. Even the revision of the constitution of the Labour party in 1918 and the invitation to the "workers by brain" to join did not change matters materially. Some of the intellectuals who answered the call may have received comfortable appointments and probably enjoyed gratifying publicity, but in substance they remained expert if well remunerated servants of the trade unions acting through the party. On the other hand, the intellectuals in the continental socialist and communist movements dominate their parties.

The difference in basic control has resulted in different general political and social characteristics. The Social Democratic and Communist parties maintain an active interest in national and international matters, in intellectual or cultural issues and in social theory and their behavior in crucial situations is determined by these interests. The course of the Labour party, on the other hand, has generally been determined by the trade union outlook, and the immediate concerns of the trade union organizations have at all times directed labor party policy. Thus in the matter of relations with Soviet Russia the socialist intellectual leaders of the British Labour party were obliged to subordinate their own partisan animus to the pragmatic concern of the trade unionists with the problem of employment. In the crisis of 1931 the attack by the parliamentary majority on the unemployment insurance system precipitated the Labour party's refusal to "carry on" the government. The members of the Labour government quit office by direction of the trade union leadership on a straight labor issue, whereas the Social Democratic party in Germany despite its anxiety to work with the trade unions let its policy be guided by a desire to "save the republic." The democratic, or the revolutionary, outlook has been the dominant consideration of socialism or communism in politics, while the class, or the economic, viewpoint has been the first concern of laborism.

J. B. S. HARDMAN

**GREAT BRITAIN.** Although an organized working class with large class conscious sections existed in Great Britain long before it did in any other European country, the British Labour party is a generation younger than continental socialist parties. Efforts to bring English workers into politics during the reform struggles in-

spired by the French Revolution left behind only some suggestive literature and a list of martyrs to savage repression. In the 1830's such men as Bronterre O'Brien urged on workers the necessity of winning political power, but after the decline of revolutionary Chartism in the middle of the century most British workers accepted capitalism, then in a definitely progressive stage with expanding imperial and foreign markets, as inevitable. They shared with the Victorian middle class a faith in thrift, individualism and nonconformist religious doctrines. For individual self-improvement they looked to literary institutes, for economic advance to collective bargaining. Labor in general was aware of a social rather than of an economic cleavage between "the classes and the masses." Remembering the quasi-feudal servitude under which their fathers had lived before the industrial revolution, workers were more critical of landowners than of capitalists. Robert Applegarth in advocating an extended franchise represented perhaps the height of political interest among trade unionists of his generation. When in 1867 Sheffield workers put up a parliamentary candidate they chose Anthony Mundella, a Liberal manufacturer, on a "class harmony" platform. Labor was content to pursue the Liberal party, through which miners supported by compact groups following a hereditary trade secured an appreciable number of parliamentary seats. The trade union movement as a whole concentrated on immediate issues, mainly of wages and hours, and exerted only an indirect political influence, greatly to the satisfaction of Liberals, who regarded it as a force for "rational conservatism" and a bulwark against independent labor politics.

Modern socialism in England originated among middle class intellectuals. William Morris and H. M. Hyndman, who founded the Social Democratic Federation in 1881, were pioneers in preaching class consciousness and independent labor politics but never won a numerous following. More important and typical was the Fabian Society, founded in 1883, to which belonged such intellectuals as Sidney and Beatrice Webb, Bernard Shaw and H. G. Wells. The Fabians were "gradualists" about the transfer of industry to public ownership, relying on persuasion and statistics and tending to idealize the bureaucrat. They were anti-Marxist and antirevolutionary, decried the class war and were inclined to be imperialists. Their first strategy (soon abandoned) was to "permeate" the Liberal party. Although the society never had a working

class following, its publications, especially the *Fabian Essays*, gradually sapped Victorian individualism and complacency among the middle class youth and later among workers, thus laying an intellectual and emotional basis for independent labor politics. Among other influences which made the Labour party one must reckon the *Clarion*, a lively weekly edited by Robert Blatchford, whose *Merrie England* (London 1894) was the most popular of socialist books.

In 1874 the Labour Representation League and a decade later the Labour Electoral Association succeeded in electing Labour candidates to the House, but both were rapidly absorbed by the Liberal party. The work of founding a proletarian organization devolved on Keir Hardie (q.v.), a miner who realizing the limitations and costliness of isolated strike struggles turned first to Liberal and later to Labour politics as the alternative. His ethical socialism based on an ideal of service was well calculated to win workers prepared by a chapel upbringing. In 1893 he founded the Independent Labour party and soon gained Philip Snowden and Ramsay MacDonald, both of working class origin, as lieutenants.

Rising prices after 1896 and the demand for higher wages favored the growth of a militant "new unionism," which after the turn of the century began to combat the "labor aristocracy" (skilled and relatively well paid craft unions), aiming at a wider industrial unionism and the organization of the unorganized. The Trades Union Congress adopted some socialist resolutions and the I. L. P. (as the Independent Labour party was always called) began to put up candidates for Parliament. Although for years the new party had to meet the objection that it split the progressive vote, its persistent election fights served to propagate its ideas. In 1892 and 1900 Keir Hardie was returned to the House, where his tactics did much to convert workers to the idea of a labor party.

Inasmuch as the I.L.P. had made many enemies through its missionary activities, it was unacceptable as a basis for a new national party. Instead the trade union practise of sending members to Parliament was generalized and made the basis of the new party. It was founded in 1900 as the Labour Representation Committee and after 1906 was called the Labour party. Unlike continental socialist parties, which are based upon individual membership, the Labour party was a federation of unions and the three socialist societies; as a result it at once acquired status as

well as funds through a levy on union members. But it had many weaknesses. Although it insisted that its conception of labor included brain workers as well as hand workers, it was, compared with the German Social Democracy, always poor in intellectuals and organized intellectual life. It had for years no party press and the *Daily Herald* still does little to popularize socialism. The mass of unionists were never converted to socialism, and many who would answer a strike call would vote Liberal or even Tory. The unions, which provided most of the campaign funds, usually nominated as candidates administrative officials, who were unusually dull in the House. A growing strain was put on the loyalty of the I.L.P., which, although it did most of the organizing and propaganda, was so small as to be subject to the domination of any bloc of three or four large unions. In recent years this structural fault in the Labour party has been partially repaired by the creation of an individual membership section.

Although the I.L.P. spread socialist propaganda within its ranks, the Labour party remained for long under the spell of Liberal tradition. Its motive force was not so much socialist ideas as a demand for independent working class representation. Until after the World War an unavowed alliance often enabled its candidates to escape Liberal opposition, and in Parliament they did little more than follow the Liberal lead in social reform, the constitutional struggle with the Lords and efforts to confer home rule on Ireland. They supported Liberal budgets, including military appropriations, and generally acted like a left wing of the Liberal party.

A series of bitter strikes beginning in the South Wales mine fields in 1905 and culminating in the formation in 1913 of the aggressive Triple Alliance of miners, railway men and transport workers stimulated a feeling of class solidarity which the World War submerged but did not obliterate. Since the generation of workers reared in liberalism was dying out, Lloyd George's formation of the war coalition completed the disillusionment of the workers. By the enfranchisement of women and the simplification of the electoral qualification the electorate was more than doubled in 1918 and further increased in 1929. Under Arthur Henderson the Labour party built an efficient electioneering machine. All these developments aided the party, and its vote grew rapidly.

In August, 1914, MacDonald backed almost unanimously by the I.L.P. took a pacifist posi-

tion. The Labour party declared an industrial truce and eventually joined the war coalition, although it advocated a peace of conciliation. MacDonald lost the leadership of the Labour party and in the "khaki" election of 1918 he and Snowden and most of their pacifist followers lost their seats. At the end of the war the representatives of the strengthened I.L.P. left the Socialist International for the Vienna International, coming back again in 1923.

LABOUR VOTE AND LABOUR REPRESENTATION IN HOUSE OF COMMONS, 1895-1931

YEAR OF ELECTION	LABOUR VOTE	LABOUR VOTE AS PERCENTAGE OF TOTAL	LABOUR MEMBERS ELECTED
1895*	44,594	1.2	0
1900†	62,698	1.9	2
1906	323,690	4.8	29
1910, January	505,690	7.5	40
1910, December	370,802	7.0	42
1918	2,244,945	22.0	57
1922	4,236,733	29.5	142
1923	4,348,379	30.5	191
1924	5,487,620	32.9	151
1929	8,362,594	36.9	288
1931	6,648,023	30.7	52

\* I. L. P. vote.

† Labour Representation Committee vote.

The chief drama of the Labour movement was now played outside the House. The post-war revolutionary ferment in England took the form of quasi-political strikes, a form as old and as English as Robert Owen. British labor followed the Russian Revolution with friendly interest, agitated against the blockade and contemplated a strike in 1920 against the government's plan of military aid to counter-revolutionary Poland. Lloyd George's failure to act on the report of a royal commission in favor of coal mine nationalization led to the miners' strike in 1921, which proved disastrous when railway men and transport workers influenced by J. H. Thomas failed to go out in sympathy. There was at this time some contact between Moscow and left wing Labour and a small, active Communist party was formed. But although the Russian Revolution gave an emotional stimulus to English labor and aroused much sympathy, the main body of the Labour party held to gradualism and reformism. At and after the election of 1918 the Labour party worked for a minimum standard of life; that is, for the abolition of gross poverty through social reforms differing only in degree from recent Liberal legislation. In 1922 and 1923 along with some leading Liberals it concentrated

on the proposal of a capital levy. It was in earnest over nationalization only for the coal mines.

In 1922 the party under MacDonald became second in number in the House and acquired the rights of His Majesty's Opposition. In 1924 by an accident inevitable under a three-party system Labour came into office. Snowden produced an orthodox Gladstonian budget. Schemes of wage fixing for agricultural labor and for promoting workers' housing were adopted. The outstanding record was MacDonald's at the Foreign Office. He recognized the Soviet Union and in association with a left French government restored European peace after the Ruhr occupation. Since as a minority government it was prevented from doing anything of which the Liberals disapproved, the Labour government observed all the conventions, respected the monarchy and like Tories and Liberals followed behind the scenes the guidance of a singularly adroit civil service. After nine months the Tories exploiting the forged Zinovieff letter created a Red scare during the general election and Labour was defeated despite the gain in prestige which resulted from its first period in office.

Interest now again centered in the unions. The left expressed its inclination to "direct action" in the general strike of 1926. This was without serious revolutionary intention and was but a bluff of the Trades Union Congress which the government forced it to make good. The defeat of the strike threw the movement back on opportunism and restored MacDonald's ascendancy. The party expelled all communists and adopted a frigid attitude toward Russia. The I.L.P., which had outgrown its ethical attitude, worked out a program to cope with chronic unemployment, to rationalize backward industries and agriculture and to initiate the transition to socialism through the ballot by capturing for the community control of the main keys to economic power, especially banking. MacDonald suppressed this program and substituted an incoherent compilation of reformist projects.

The party's automatic growth continued and it returned to Parliament in 1929 with a plurality. Few adherents of the Labour party can think of its second period of office without shame and disgust. MacDonald treated the Liberals with a new cordiality, his habit of consulting the opposition serving as preparation for coalition. The key cabinet position, a kind of dictatorship to cope with unemployment, went to Thomas, who took to repeating the usual reactionary excuses



for doing nothing for the workers. Snowden, as chancellor of the Exchequer, fell obviously under the influence of the bankers and vetoed credit expansion and any bold program of public works, such as even the Liberals had advocated.

The legislative machine worked with exasperating slowness. Conditions of widows' pensions were improved, a bill on Liberal lines rationalized the mining industry, another promoted orderly agricultural marketing. Outstanding successes were once more in foreign policy with Henderson now at the head of the Foreign Office: MacDonald's conciliatory visit to Washington, the London Naval Conference, the restoration of diplomatic relations with Russia, the removal of the French from the Rhineland, the signing at Geneva of the optional clause for arbitration. Tory policy was abandoned in India and the Round Table Conference summoned. But there was no coping with the main problem. Although the government's policy was open to a wider attack, the I.L.P. concentrated chiefly on criticizing the inadequacy of relief provisions.

In the summer of 1931 a vast foreign loan was needed to halt a run on the Bank of England's gold reserves. Prompted apparently by the Bank of England, American bankers refused to lend unless the disordered budget were balanced by drastic economies, including specifically a cut in unemployment relief. The Labour cabinet, while sparing armament appropriations, was willing to economize by devastating the social services and by reducing the pay of all civil service grades. When a cabinet majority refused, however, to give a signal for general wage reduction by cutting the dole, MacDonald (now a distinguished individual without a party) accepted the king's invitation to form a "National" coalition with Tories and Liberals. The Labour movement on the whole accepted the secession of MacDonald, Snowden and Thomas with relief, realizing rather tardily that they had long since been absorbed by the governing class.

The general election that followed brought on the Labour party a disaster unprecedented in English history. The challenge to the money power which was implied in the Labour party's project for control of banking caused the combined opposition of Liberals and Tories to be ranged against it. Its former leaders deliberately created a financial panic. MacDonald jettisoned a life long belief in free trade. Snowden assailed as "Bolshevism run mad" legislative proposals for the nationalization of the Bank of England which stood in draft in his handwriting.

Ill prepared and ill led for the fight the party was routed and, although its total vote showed only a 20 percent reduction, it came back to the House a remnant of its former self, only two members of the late cabinet escaping the deluge.

Since the election of 1931 the Labour party has struggled to build up a reliable mass membership of individual adherents. The discussions leading to the revised program which was laid before its annual conference in 1932 revealed a swing to the left and an attempt to work out something more than the familiar compilation of uncoordinated proposals for social reform. The party now realizes (as the I.L.P. did before it) that any advance to a planned economy presupposes the effective command of the state, involving public ownership in most cases, over the key positions which confer economic power. The events of 1930-31 have led the party to concentrate upon finance. All agree that the Bank of England must be nationalized; some would nationalize the joint stock banks also; the majority would be content to control them. It is further proposed to set up a national investment trust under public control which would direct the flow of savings into socially useful channels in accordance with a definite plan of development and at the same time penetrate industry, acquiring a measure of control through the new capital which it distributed. The party's monetary policy aims at a moderate, controlled inflation and prefers a commodity standard to any return to gold. The other key positions chiefly in view are the coal industry and electricity, regarded as a single complex, the railways and road transport and agricultural land. In the tariff controversy the party has abandoned free trade dogmas as relics of *laissez faire* but is suspicious of tariffs and would prefer to control foreign trade partly through disinterested public boards, which would directly import wheat, meat and eventually raw materials with a system of licenses and quotas for other goods. It is generally realized that a radical program of this kind would involve a sharp struggle with the financial interests and with the House of Lords, and some influential leaders have said that they will not again assume office without a majority in the Commons. This attitude if firmly held would mean that the party refuses (as some put it) "to administer the capitalist system" and is now consciously bent on engineering the transition to a socialist society. The party has, however, a right wing to which belong some of the older leaders, the "machine" and its one newspaper, the *Daily Herald*; there is even a section (prob-

ably insignificant in numbers) which would welcome MacDonald's return as leader. The ablest of its younger leaders, Sir Stafford Cripps, the best debater in its small parliamentary contingent, belongs emphatically to the left.

The feud which developed in Parliament during the second Labour ministry between the I.L.P. and the official party has resulted in the secession of the former. The Labour party insisted on stricter discipline in the Commons and imposed standing orders which, while allowing a member in a case of conscience to abstain from voting, forbade a direct vote against the party. One might have supposed that the departure of the national leaders would have healed this feud, especially since the question of voting is of no importance in a parliament like that following the 1931 elections, in which the Labour representation is very small. Both sides, however, have shown an unyielding temper, the I.L.P. insisting that standing orders must be modified, the Labour party requiring that the five I.L.P. members must rejoin the party before this can be discussed. The consequent decision of the I.L.P. to disaffiliate places it in the same position of hostile detachment as the Communist party and may weaken Labour at the next election. The underlying reason for the I.L.P.'s action appears to be its suspicion of the leaders and the main body of the party who tamely followed MacDonald up to the final split over the dole.

H. N. BRAILSFORD

**BRITISH DOMINIONS.** All the dominion labor parties have been created by the trade unions. They owe very little to continental socialism, for their ideas have been imported from the general stock of British liberalism, Fabianism and other programs for democratic and social reform, combined with elements of Ruskin, Morris, Henry George, Robert Blatchford, Wells and Bellamy and in later years of guild socialism. These influences, however, were little more than a top dressing to a body of aims based on local labor problems. The real task of the labor parties was to secure through political effort those improvements in labor conditions which could not be obtained by direct trade union action or by pressure upon the old political parties. Once launched, they found that they must have views on issues which were not strictly labor problems, such as defense, finance, the conduct of the World War, tariffs, the native problem in South Africa and the nationalist

controversy in Ireland. Some of these problems have more than once caused serious splits in the parties. Finally, a party which has captured the government has found that the obstacles to socialization are so large, the resistance by second chambers is so tough, the machinery of legislation and administration so slow to move, funds for ambitious social programs are so difficult to obtain, that rapid and heroic achievement of party aims has had to give way to "the inevitability of gradualness."

The history of the Australian Labour party, the only dominion party to reach full stature and to enjoy the opportunity to shape legislation and administration, affords the best illustration of these general statements. Before any labor party existed Chartist ideas had given Australia advanced democratic machinery, the need for railways had led to state construction and management, the fear of racial mixture and the strength of the trade unions had secured laws against Asiatics and for the protection of wage earners, while land problems had led the state to experiment in the interest of the small farmer settler. Trade unions were content to negotiate directly with employers, to bring pressure to bear on politicians and to toy with the notion of direct labor representation. But the strike of 1890 and the years of depression and anti-union activity which followed smashed the union machinery, decimated its membership, induced employers to withdraw concessions they had made to the unions and revealed the fact that in a serious conflict the full strength of the state was at the disposal of "the master class" as long as that class controlled the government. Australian labor therefore turned to political action. In the New South Wales election of June, 1891, 36 out of 45 Labour candidates were elected. Success came soon in other states, and in the first federal election in 1901 the Labour party won 16 seats out of 75 in the House of Representatives and 8 out of 36 in the Senate. Universal adult suffrage for both houses helped to make this result possible, while payment of members freed the party from the cost of maintaining its representatives.

Once the party had won more than a handful of seats in any legislature it held the balance of power; its support was then given to whichever of the older parties would make the highest bid. Some important legislative and administrative gains were thus made, but the position was unsatisfactory to all parties. By 1909 therefore Liberals and Conservatives had fused in

common defense against "the socialist tiger," and the Labour-party became the official opposition. The next step came with the winning of an absolute majority; this happened in the commonwealth in 1909 and in New South Wales in 1910, and by 1915 Labour was in power in every lower house but one. The conscription issue tore the party to pieces in 1916; those leaders who favored compulsory military service joined with their Liberal opponents and the rest of the party continued as an ineffectual opposition. Labour returned to power later; by 1925 it ruled five states and in 1929 the party captured the federal government. The depression which began in 1929 divided the party again; those leaders who were determined to balance the budget and strengthen the country's impaired financial condition by drastic economies went over into the enemy's camp and the bulk of the party again passed into eclipse. By 1932 Labour had lost control everywhere except in Queensland and had split into two groups. After the federal elections of 1931 the moderate group held 8 out of 36 seats in the Senate and 14 out of 75 in the House; the left wing group led by Lang, former New South Wales premier, 2 seats in the Senate and 4 in the House.

The success of the Australian Labour party rested largely on its organization and program. The trade unions provide a firm foundation in a land where town dwellers constitute nearly two thirds of the population and where a larger proportion of the population than in any other country are unionists. Every unionist is a member of the party through his union; non-unionists may join the party through local branches, which are good centers for information and conversion. The candidate for a particular area is chosen in a "preselection" ballot by the unionists and branch members in the area; this system provides an opening for local talent and ambition. An annual party conference in every state, consisting of delegates chosen on the preselection ballot, offers a chance for the democratic framing of the party program for the state. The state conference elects delegates to the Australian party conference and also chooses a state executive, which is the essential controlling power between conferences. The Australian conference usually meets triennially and since 1915 also has elected an executive to function between conferences. The problem of control of the parliamentary members was raised at an early date and tight discipline has been kept through the "pledge" and the functioning

of the party caucus. All candidates who offer themselves for the preselection ballot must promise not to oppose the candidate selected and, if elected, to vote as the caucus determines. The caucus consists of all Labour members of both houses and meets generally at least once a week. It thus permits the members of one house to influence action in the other and at the same time usurps the usually dominant position of the premier over the cabinet. The caucus chooses and controls the cabinet and is itself more or less effectively controlled by the executive and the conference. The development of Labour's organization has altered fundamentally the previous regional decentralized character of Australian political parties and the functioning of parliamentary government in Australia.

Labour's program was not doctrinaire and had few abstractions; it included a set of trade union "planks" and aimed to secure democratic governmental machinery, "equality of opportunity" in education, heavy taxation of the rich, the breaking up of underutilized large estates, the protection of wage earners from exploitation, the safeguarding of infant industries and of the high standard of living against foreign competition and the strengthening of Australia's political and constitutional status within the British Commonwealth of Nations. In such a comprehensive program there was something to attract all classes except the ingrained conservative and the old fashioned employer; and since Labour in office showed itself quite as statesmanlike as did its opponents, it won the vote of a large section of the middle class. On paper it declared for a new social system, for "socialization of the means of production, distribution, and exchange" through parliamentary action. But few steps have actually been taken in that direction, and with one or two exceptions—of which the outstanding was the establishment of the Commonwealth Bank in 1911—little has been done to reduce the field of capitalistic enterprise. At best there has been an increasing regulation of private ventures or the establishment of services to aid the farmer; at worst there have been some costly experiments in state production and trade, and socialism is little nearer after forty years of talk and trial. With the achievement of its early "practical" nationalistic planks Labour has been increasingly forced to turn to international socialism for its immediate program as well as its ultimate ideal; the result has

been to alienate considerable sections of its former essentially liberal but not socialist supporters.

In New Zealand as in Australia an unsuccessful strike in 1890 and a continued depression together with revelations of "sweating" led the workers to demand labor legislation and protective tariffs. This program was largely shared by the Liberal party, consisting essentially of small farmers, which was always in close touch with labor and courted its vote. In the elections of 1890 six trade unionists were elected as Labour candidates within the Liberal party, and from 1891 until 1906 the Liberal-Labour party ruled the country, passing important land, labor and state socialistic legislation. But the recovery of farm prices in the first years of the twentieth century accentuated the divergence of interests between the farmers and the workers, and the combination of these two against the large landowners showed increasing signs of disintegration. Beginning in 1902 the trades and labor councils began to agitate for an independent labor party, but the break did not actually occur until Seddon's death in 1906. A series of organizations culminated in the formation in 1912 of the United Labour party, a moderate party opposed to the class war principle. By 1928 the party held the balance of power with 20 seats in a house of 80 members; but in 1931 the two old parties fused into a United-Reform party and Labour became the opposition, facing the coalesced farmers and capitalists. The elections of 1931 gave Labour 24 out of 80 seats in the House.

In the Union of South Africa the task of organized labor is to protect the white worker against the big mining company above and the native laborer below, with the Dutch farmer looking on. Soon after the South African War English immigrants who had known British labor developments began a Labour party on the Rand. The drastic handling of the strikes in 1913 and 1922 by General Smuts strengthened the party's cause and drove it in 1923 into an alliance with the Nationalists; the latter agreed to modify their plans for an autonomous republic, while Labour promised to be silent about socialization. The alliance overthrew Smuts and his party in 1924, and Labour took 2 seats in the new government. But the party executive growing suspicious of the alliance asked the ministers in 1929 to relinquish their portfolios. They refused, were evicted from the party and formed their own Labour group. An unsuccessful

attempt to close this schism, which weakened Labour at the 1929 election, failed in 1931.

In pre-war Ireland the political allegiance of organized labor was divided between the Irish Nationalists and the British Labour Representation Committee (subsequently the Labour party), with the southerners in general favoring the former and the northerners the latter. Gradually, however, labor sentiment drifted away from the Nationalists. In 1912 the Irish Trades Union Congress endorsed the principle of a pledge bound Irish Labour party and in 1914 its constitution was amended and its name changed to make it a Labour party also. Its political activities were practically dormant during the World War, and it did not contest any parliamentary seats in the elections of 1918 and 1921 but supported the republican candidates; it did, however, contest local and municipal elections with marked success. With the establishment of the Free State the Labour party entered the parliamentary field in the 1922 elections and won 17 of the 128 seats in the Dail. The party has fought strenuously for improved labor conditions, and while it supports national autonomy it seeks to damp down the flames of controversy and give Ireland peace in which to progress. For instance, when the 1932 elections shifted power from Cosgrave to De Valera but left Labour holding the balance, with 6 out of 60 seats in the Senate and 7 out of 153 in the Dail, Labour voted with the government to abolish the oath of allegiance but did its utmost to discover a peaceful settlement of the dispute between London and Dublin.

Canadian labor like that of the United States has done little party building on a large scale. It has passed resolutions urging or opposing legislative and administrative action and has lobbied. But it is too weak in numbers and class consciousness to enter politics with any force, and the left wing has been absorbed by the grain growers. During the World War the ferment of ideas on reconstruction led the central executive of the trade union movement to recommend the organization of provincial labor parties, and this was done in six provinces. Some success followed; in 1921 two Labour members were elected to the dominion legislature, while in Ontario and Manitoba a farmer-labor onslaught captured many seats. The federal representation has not grown and ground has been lost in the provinces, but in some municipalities the party has significant strength.

HERBERT HEATON

UNITED STATES. The first labor party in the United States and in the world was the Working Men's party launched in 1828 by the Mechanics' Union of Trade Associations of Philadelphia. In the next few years the example was followed in New York, New Jersey, New England and states west. These early labor parties were quite radical in their demands and social outlook. They were aware of the position of labor as a class in the social order and their legislative demands were aimed at furthering the interests of workers. Their social objective, however, was to achieve a middle class status for labor and their ideal was a society of small manufacturers, merchants and farmers. It was through their efforts, even if indirectly, that the public school system was established, imprisonment for debts abolished and mechanics' lien laws and homestead laws were enacted. The intellectuals played an important part in these movements. European Owenism and Fourierism found active followers in Albert Brisbane, Frances Wright, Robert Dale Owen and later Horace Greeley. Internal dissension over principles, however, destroyed the Working Men's party in New York even before the depression of 1837 crushed unionism. Intellectual utopianism, middle class aspirations and agrarianism are perhaps a peculiar amalgamation to be found in a labor movement, yet in the prevailing economic and social set up of the time the development had a logic of its own. The shifting frontiers of the country prevented economic solidification of classes on the lower rungs of the social ladder. It has been correctly observed that an independent labor politics which is free from entangling outside alliances has really never been tried in the United States.

About fifty years after the first local and sporadic attempts at labor party building significant efforts were again made to harness the potential political power of labor to class ends. The National Reform party was created in 1872 by the National Labor Union, a central federation representing local, state and national trade associations somewhat similar to the later American Federation of Labor; at its peak the union was reputed to have a membership of 640,000. The party, which was not only representative of labor but also socially radical in terms of the America of the day, did not last. The experiences throughout the stormy 1880's, which saw the rise of the Greenback Labor party in 1880 and of the United Labor party under the domination of Henry George in New York in 1886,

a period marked by the Haymarket disaster, a growing anarchist movement and battles all along the line between the Knights of Labor, the socialists, the Populists and the A. F. of L., resulted in what seemed a final abandonment of all hope of labor partyism. The activist and class conscious labor elements bent on using independent labor politics in the class struggle reconciled themselves to limited functioning within a party of creed instead of a party of class. The Socialist Labor party was established, then was split and largely superseded by the Socialist party, which in turn was split and greatly weakened by the Communist party. Not until the end of the World War did there appear signs of a regenerated interest in a labor party. The first labor party of the new period arose in Bridgeport, Connecticut, in 1918 as an after effect of the machinists' eight-hour movement. The movement, which assumed national proportions in 1919 but disappeared again in 1925, was the result of two major factors—the phenomenal if temporary rise of the United States as an agricultural produce exporting country and the impact upon American labor of forces and influences which followed the war.

Stimulated by the war prices spurted upward, improving the position of the independent farmers but also stimulating large scale farming based on control of transport facilities, grain elevators and credits. The small farmer facing a rapid loss of his independence turned for aid to group but not collectivist cooperation and to independent farmer politics. The National Non-partisan League, a defense apparatus of small and middle farmers, entered politics class consciously in 1916 through organized participation in Republican and Democratic primaries and soon developed spectacular strength; by 1918 it had secured a majority control in the legislature of North Dakota and impressive minorities in Idaho, Minnesota, Montana, South Dakota, Colorado and Nebraska. The league became a party in fact if not in name. The logic of its growth, with the relentless fight against the league by the parties of corporate capital, made a farmer-labor alliance logical and necessary. A working relationship seemed the more possible, since the league was led by men of socialist background and experience, for in Minnesota especially the socialists had achieved not inconsiderable standing in the pre-war years.

Trade union labor experienced an organizational and an intellectual revival during the war years. The first resulted in a considerable

growth of trade union membership. The second was more intensive than extensive. The repercussions of the Russian and German revolutions stirred American labor profoundly. The phenomenal rise of British labor to political significance inspired the younger subordinate leaders in the trade union hierarchy; they saw in independent political action a leverage against the older men whose stock in trade or power not infrequently consisted only of the advantages of an illicit political alliance with the old party machines. A political labor party would give the new man a place in the sun, would tend to dislodge holdover leadership. Some unions, especially those whose membership was generally radical, as, for instance, the coal miners' union, were committed to the idea of a labor party. In other cases, as in that of the transportation unions, economic action was almost impossible except by way of political pressure. The year 1919 was a banner year for left orientations in the United States. The gigantic steel strike; the general strike in Seattle, Washington; the Boston police strike; the miners' nation wide strike, which was crushed by an abrupt and drastic interference of the federal courts at the instance of the government and at the behest of the mine operators, were but instances of the chain of events which set in motion an enormous psychological transformation. On January 11, 1919, the American Labor party of Greater New York was organized by delegates of the local trade unions. In May of the same year the Pennsylvania State Federation of Labor declared for independent political action, to be followed in September by similar action in Indiana. In April the Illinois body at its annual convention took steps to form a state labor party. On November 22, 1919, the National Labor party was launched.

In all these movements local and state union officials took an active part along with direct representatives of the rank and file, while national union heads were conspicuously absent. The American Federation of Labor as such was entirely opposed to the movement. In 1920 the Farmer-Labor party succeeded the National Labor party, running candidates for president and vice president under that party name. The vote the party received was very disappointing. Of the more than 4,000,000 workers who participated in the mass strikes of 1919 and of the many sympathizers who followed the strike movement with anxious interest only 265,411 voted the Farmer-Labor party ticket in 1920.

This setback did not, however, altogether end the careers of the various state and local parties. Another effort, of a different orientation, was in progress. It took the shape of a Conference for Progressive Political Action (C. P. P. A.), a somewhat loosely organized body of numerous national trade unions, local, state and national labor parties, including also the Socialist party but not the Communist party. The C. P. P. A. was organized in February, 1922, and soon became the storm center of the issue of independent political action. Opposition to the traditional inactivist political policy of the A. F. of L. doubtless chiefly motivated the participants in the C. P. P. A. There unanimity ended. The majority of the C. P. P. A., led by the powerful railroad brotherhoods, favored an active non-partisan policy and operation through old party primaries where possible, feasible and promising.

Numerous attempts by the adherents of independent labor action to form an impressive national farmer-labor party through the forces gathered around the C. P. P. A. failed, and the organization went no further than to run Senator Robert M. La Follette and Senator Burton K. Wheeler on an independent Progressive ticket in the 1924 presidential election. The Socialist party stood by the ticket. The Executive Council of the A. F. of L. half heartedly endorsed the ticket with the stipulation that it was endorsing the two men but not their Progressive party or any prospective independent party. La Follette polled 4,822,856 votes, or 16.6 percent of the total of 29,091,417 votes cast. The C. P. P. A. survived the election just long enough to prepare its demise. The convention of 1925 adjourned without fixing another meeting date. The labor party movement once more went into eclipse.

In Minnesota, however, there has existed since 1920 a functioning political labor organization, the Farmer-Labor party. It grew out of an informal merger of two forces which were at one time influential: the Socialist party in the cities and the National Nonpartisan League. After many structural and political zigzags the organization succeeded in lining up the trade unions for steady joint action with the farmers and has thus been firmly established as a significant factor in the political life of the state. In 1932 there were in office, elected by the Minnesota Farmer-Labor party, the governor (from 1930), one senator (from 1922), one congressman (from 1928), about one third of the two houses of the state legislature and the

mayors of four cities, among them the three largest in the state. Generally viewed as the potential nucleus of a national farmer-labor party and with its leaders openly upholding that view, the Farmer-Labor party nevertheless endorsed the Democratic presidential candidate in 1932. The Minnesota experience in its application to certain vital points of contention bears out the conclusions of Rice: "In . . . Minnesota, the data are convincing that farmers and working men have supported the same candidates . . ." and that "Should questions involving political reform, public utilities, or the rights and privileges of labor or agriculture become dominant issues . . . there seems a possibility (on the basis of our legislative data) that a successful political alliance between these classes might develop" (*Farmers and Workers in American Politics*, p. 183 and 219-20).

The only other labor party in the United States which claims a state wide jurisdiction is the Independent Labor party of Pennsylvania, although its existence has been altogether nominal. Recent attempts to form local labor parties include the following: the Labor party of Cook County, Illinois, organized in 1930, largely on adjunct to the Socialist party; the Independent Labor party of Kanawha valley, West Virginia, created by the independent West Virginia Mine Workers' Union after the failure of its strike in the summer of 1931; the Independent Labor party in Philadelphia, sponsored by the American Federation of Full Fashioned Hosiery Workers in that city and hardly distinguishable from the local Socialist party; the Labor parties in Kenosha, Wisconsin, in New Bedford, Massachusetts, and in Elizabethton, Tennessee, all passing outgrowths of workers' resentment against strike defeats.

These labor parties which appeared after the breakdown of the "prosperity era" may be and probably are representative of unexplored potentialities but, save in the Minnesota case, they are symptoms at best and not active factors. There is still no functioning national political labor party in the United States. Furthermore the registered membership of all the socialist or creed parties, however potentially valuable it may be considered as an organizing force, is rather negligible and is in no wise comparable to the strength of the continental working class parties whether they be socialist, communist or labor.

J. B. S. HARDMAN

See: LABOR MOVEMENT; TRADE UNIONS; INDUSTRIAL

RELATIONS; LABOR LEGISLATION AND LAW; SOCIALIST PARTIES; COMMUNIST PARTIES; FABIANISM; DEMOCRACY; SOCIALIZATION; GOVERNMENT OWNERSHIP.

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LABOR TAX. *See* FORCED LABOR.

LABOR TURNOVER. The fluctuations in the working force within an industrial establishment may be divided into two main classes: first, an increase or decrease in the size of the working force and, second, the hiring of workers in numbers sufficient to maintain the working force at a given level. One group of students would confine the use of the term labor turnover to the second of these meanings and consequently considers replacement as identical with turnover. Replacements correspond roughly with accessions if the working force is decreasing and with separations if it is increasing; it is this use of the term which has been adopted by the United States Bureau of Labor Statistics. Another group, however, holds that separations constitute the more important phenomenon and should be used to measure turnover in a contracting as well as in an expanding working force. This group considers that labor turnover is a problem of the instability of employment, and that all separations regardless of replacement contribute to the instability of employment.

Labor turnover is essentially a manifestation of maladjustment. A limited amount of turnover, expressing the mobility of labor, is unavoidable;

but in its abnormal and acute forms labor turnover is an element of industrial waste. The worker suffers from insecurity and depreciated earnings, while the employer is harassed by higher labor costs; society meanwhile is deprived of available labor and potential wealth. All the causes of excessive labor turnover—seasonal and cyclical fluctuations, conditions within an enterprise which produce separations, and partly the instability of labor—are indications of faulty economic and social organization.

For comparative purposes it is necessary to reduce the absolute figures of turnover to percentages. This can be done by dividing either replacements or separations by the average number exposed to turnover. The National Association of Employment Managers in the United States once proposed to use as the denominator the average number actually employed during a given pay period. This measurement was defective, however, because it omitted the absentees, who were certainly exposed to turnover. To meet this difficulty it was proposed that the average number on the pay roll should be used as the denominator, although this was in turn objected to by Brissenden, who pointed out that it would include men who were on the pay roll but who had left the employ of the concern before the pay period expired.

The earliest modern studies were made in Germany and published in the *Schriften des Vereins für Sozialpolitik* in 1909 and 1910. In the United States public attention was first attracted to the problem shortly before this country's entrance into the World War, in part because the shutting off of immigration forced American industries to conserve their labor supply more carefully and in part because of the relative scarcity of labor during the period of American participation in the war. Another contributing factor was the upward movement of money wages, which operated unevenly and which necessarily led many workers to leave their jobs in order to obtain higher earnings in others. Studies by Slichter indicated an average turnover rate in American manufacturing in 1914 of approximately 100 percent, while wartime studies by the Bureau of Labor Statistics showed an average turnover for 1917-18 in the firms studied of approximately 200 percent.

These and other studies, notably that by Alexander, helped to awaken American industries to the losses which they were experiencing as a result of the high turnover rates. The advent of new workers to replace the old generally in-



volved added costs, of which the most important were expense in hiring and training, wastage of material and breakage of tools and machinery, increased labor and overhead costs resulting from decreased production, and idle overhead in the period before the replacement actually took place. One of the most tangible evidences of this increased concern on the part of industry was the stimulation which it gave to the establishment of personnel departments. The functions and powers of these departments varied greatly, but at their minimum they were designed to aid in the recruiting of labor and in the greater stabilization of the working force.

The depression of 1920-21 brought about an appreciable decline in American labor turnover rates. With the much greater stabilization of money wages, the improved personnel policies of employers and the increasing displacement of labor by improved efficiency which characterized the years from 1923 to 1929 this new level was generally maintained. An extensive survey by the United States Bureau of Labor Statistics of selected factories in not fewer than seventy-five industries in the boom year of 1929 showed an average turnover rate of only 45 percent.

While little or no material has been published on the subject in Great Britain, it seems probable from the number of unemployment insurance cards which are returned annually to the British employment exchanges in comparison with the numbers covered by the insurance act that the average percentage of labor turnover in that country in recent years has been between 50 and 60 percent. In 1922 the British Industrial Health Research Board published a study of labor turnover during the war in munitions and other factories, which was considered merely suggestive because of war conditions and the fact that the workers covered were almost exclusively women. The methods of measuring labor turnover were so diverse that it was extremely difficult to compare one factory with another; even in large establishments turnover was said to be "not infrequently a subject of conjecture rather than precise measurement." A more uniform system of measuring turnover was proposed by the board. The study revealed that the turnover rate was unusually high in the first months of employment and that it varied with locality, industry, the age of the worker and the nature of his work and factory conditions (as distinct from seasonal and cyclical factors). The board suggested that labor turnover might be reduced by more attractive wages, shorter hours and better

working conditions. In recent years there has been considerable interest in the subject in Soviet Russia because of the large flow of labor from plant to plant and the high turnover in the coal and iron industries of the Donets basin. The causes of labor turnover in Soviet Russia are in many respects different from those in other countries; for example, seasonal and cyclical factors apparently do not operate to any considerable extent.

Turnover rates are of course not uniform but vary widely as between different classes of labor and differing industries. Unskilled labor, for instance, has generally a much higher rate of turnover than has skilled. Thus Brissenden and Frankel found a percentage rate for skilled workers from 1913 to 1915 of 60 and for unskilled of 129, while in 1917-18 the respective percentages were 135 and 427. A study at the University of Chicago of the turnover rates in various occupations in a large middle western railroad in 1920 showed a variation between 19 percent for telegraphers and nearly 1700 percent for freight station laborers.

As would be expected, heavy industries, where the work is inclined to be less skilled and in addition is often unusually arduous and disagreeable, tend to have rates of turnover above the average. Thus in 1917-18 the following industries had a turnover rate of over 200 percent: automobiles, chemicals, leather and rubber, miscellaneous metal products, slaughtering and meat packing and furniture and milling. Mercantile trade, on the other hand, in both the war and the pre-war periods had turnover rates which were only two thirds of the average. Still lower were the rates in the public utility companies, where the prospect of steady work retained a far more stable working force despite the failure of wage rates during the war and post-war period to advance as rapidly as elsewhere. In the public utilities studied by the Bureau of Labor Statistics in 1913-14 gas and electricity companies had a turnover of only 15 percent, street railways 27 percent and telephone service 39 percent. While these rates increased greatly during the war they remained very much below the general average. The turnover in governmental service is particularly low. Even in the years 1917 to 1919, when federal salaries were lagging far behind the increase in the cost of living, the turnover of federal employees did not exceed 40 percent. A more recent investigation by Brissenden for the entire federal service in 1927-28 showed an average annual turnover of 19 percent, while in

the departmental services in Washington, D. C., the average was only 8 percent. In general it can be said therefore that in industries and occupations where the principle of seniority is commonly followed for both promotions and layoffs the turnover rate tends most decidedly to be below the average. This is also measurably true among organized workers, where union rules, such as the priority system and limitation of the employer's right of discharge, tend to reduce considerably the turnover of labor.

A common objection by industrial managers to the employment of women has been that a concern cannot be sure of their services for as long a period of time as it can in the case of men. It is of course true that because of marriage and motherhood women do not as a rule remain in industry for so long a time as men and thus do not have equal opportunity to rise to the more skilled positions. There is no evidence to indicate, however, that during the period in which they are gainfully employed they are more unstable than men. On the contrary, while it is difficult to make comparisons between the sexes because of the differing types of work which they perform, such evidence as does exist seems to indicate a lower turnover rate for women than for men. Thus in the stores studied by the Bureau of Labor Statistics in 1917-18 the percentage for women was 81 as compared with 144 for men. In the clothing and textile industries the relation between the two sets of rates was very similar: 129 percent for women and 204 percent for men.

It should not be thought, however, that the average worker in industry moves from job to job with the relative degree of speed which all of the above figures might indicate; the bulk of the turnover is concentrated in the minority of short service workers, thus leaving the majority to be employed for longer periods with very much lower turnover rates. It was found, for example, that in fifty-three establishments which in 1917-18 had an average turnover of approximately 133 percent five eighths of the working force had been employed throughout the preceding year and the entire turnover had come from the remaining three eighths. The average for this latter group as a whole was therefore approximately 360 percent. The relative concentration was still greater in the case of those employed less than three months. Only 5 percent of the male workers at the end of a year in a group of companies had been employed for less than two weeks, but nearly 29 percent of all the separations

during the year involved men who had been on the pay roll only for that time. This was a separation rate therefore of approximately six times that for the employees as a whole. The group which had been employed for from two weeks to one month formed in turn only 4.3 percent of the work force but had comprised 13.2 percent of the separations, and while those workers who had been with the companies for from one to three months constituted only 9.7 percent of the total force, 21.2 percent of those who had left had worked only during this period. At the other end of the scale 35 percent of the force had been employed for over five years, whereas only 3.6 percent of those who separated had been employed for that period of time. This was only one tenth of the general average.

The causes of labor turnover may be divided into those which are proximate and those which are more ultimate. Since it is separations which give rise to replacements, an analysis of their composition throws light upon the more proximate causes. Separations may be classified according to three main subdivisions. First come layoffs, when the services of the worker are supposedly satisfactory but there is no longer a job to be performed. While in the short run those who identify turnover with replacements would not regard these cases as truly giving rise to turnover they would so regard them if a seasonal or cyclical revival were to demand their replacement. The second class of separations covers discharges; here the job itself is to continue, but the worker is adjudged unsatisfactory for it. Third, there are the voluntary separations, in which the worker himself takes the initiative in leaving. In practise the distinction between the first two of these divisions is frequently blurred by the management and men are often said to be laid off who are really discharged, and the reverse. Similarly many men are considered to have left a job voluntarily when in reality they had merely estimated in advance the probable intentions of management toward them.

Of these direct causes of turnover voluntary separations formed 73 percent of the total during the years from 1910 to 1915 and 1917 to 1918, while discharges and layoffs comprised 16 and 11 percent respectively. But these proportions have of course varied with the progress of the business cycle. In depression years, such as 1914, the percentage of layoffs rose and that of voluntary separations fell, while in years of prosperity, such as 1917-18, exactly the opposite happened. The rate of discharges was much more

constant. These same variations prevailed from 1918 on, although there may be a general tendency for the proportion of voluntary separations to be less even in prosperous times than it was in the World War and in pre-war years. This development in turn may have been caused by the much greater stability of money wages as well as by the rapid increase of separations due to the installation of labor saving machinery.

Among the more underlying factors of separations three general groups of causes may be found: first, those which result from faulty management and can be largely remedied by each individual concern; second, those caused by more deep seated difficulties in industry as a whole, which are largely beyond the power of any one enterprise to alter; and, third, those due to difficulties in the circumstances and temperament of the workers themselves.

The first group includes a wide variety of causes. In the war and post-war periods the loss from improper hiring was emphasized and the hope was expressed that job analysis, which would disclose the qualities needed at a given task, and trade and psychological tests, which would reveal the present trade knowledge and capacities of the workers, would make possible far better selection and thereby reduce the turnover. Such tests, however, have been used only to a very limited extent and predominantly for clerical rather than for manual workers. On the other hand, there can be little doubt that there has been a distinct improvement in the relations between the supervisory force and the rank and file. This has been due in part to the efforts of many businesses to train their foremen in their duties as well as to the very general establishment of personnel departments. These departments not only centralize the preliminary hiring of labor (subject generally to review by the foremen) but also exercise some degree of control over discharges and aid in the adjustment of grievances. The net result has been that friction between the workers and the supervisory staff has been diminished. More attention is also paid to the problems of satisfactory adjustment of newcomers to their work and to arrangement for transfers, so that workers may if possible find the jobs for which they are best fitted. A further important factor in diminishing labor turnover has been the lessening of general wage fluctuations as well as the tendency of large corporations to adopt a more united wage policy and of other concerns to watch the movement of money wages more closely and to keep their rates more

nearly in correspondence with the prevailing scales, thereby lessening the movement of workers from lower wage to higher wage plants. By these and other means, such as the establishment of shop committees, group insurance, old age pensions and employee stock ownership, "welfare" capitalism has been able to diminish labor turnover. That an improved personnel policy will in fact generally operate to reduce turnover is indicated by the fact that the average rate of turnover for the seven years from 1913 to 1919 inclusive was 69 percent in ten concerns with well established personnel systems, as compared with an average of 111 percent for all other establishments studied by the Bureau of Labor Statistics for this period.

Far less success has been attained in reducing those seasonal and cyclical fluctuations which cause men to be alternately laid off and reemployed. Much attention has been drawn to the regularization practises of such firms as the Packard Automobile Company, Proctor and Gamble, Dennison and Company and a number of others. These firms were successful in greatly reducing seasonal slumps by the device of estimating sales in advance on the basis of past experience and then dividing these minimum yearly quotas into even monthly or weekly portions. More is produced in the dull months than can then be sold and this surplus is stored for the coming of the busy season. Another method which is sometimes used is the development of side lines or "fillers" upon which the working force can be engaged in the off seasons. The firms which have been successful with these methods have found that they are advantageous not only because the cost of labor turnover has been reduced but also because overhead capital charges have been lessened. In many cases workers have been satisfied to receive a lower hourly wage, which, however, as a result of steady work brings a higher yearly income.

Because of a few successes in stabilizing employment it has sometimes been claimed enthusiastically that all American businesses can stabilize their production and employment if they so desire. This seems to be a great exaggeration. Upon examination it will be discovered that stabilization has been successful almost exclusively in concerns producing standardized commodities which can be stored without fear that they will be outmoded by the time the busy season comes again. The case is far otherwise with those commodities which are subject to such changes. In the case of women's clothing,

for example, it is impossible for manufacturers to produce in advance. Thus it is those industries which are most subject to style changes together with some in which weather fluctuations cause especial havoc that suffer most from seasonal variations in employment. Moreover many heavy industries find it difficult to store products or to produce supplementary products; such production is usually done by a subsidiary and the problem of turnover is thus left unsolved.

In so far as cyclical fluctuations are concerned it is even more impossible for individual businesses to stabilize employment. The causes of the business cycle are so interwoven with the cumulative expansion and contraction of bank credit, with the way in which the demand for capital goods necessarily fluctuates far more widely than the demand for consumers' goods and with the ever present danger that specific sets of industries will get out of line with the development of the economy as a whole that an individual concern is largely helpless. The problem of labor turnover is therefore not simply one of management and of separate concerns but of industry as a whole and can be solved only by collective action.

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See: LABOR CONTRACTS; CASUAL LABOR; ENTICEMENT OF EMPLOYEES; LABOR DISPUTES; UNEMPLOYMENT; PERSONNEL ADMINISTRATION; VOCATIONAL GUIDANCE; SCIENTIFIC MANAGEMENT; WELFARE WORK; INDUSTRIAL; EMPLOYMENT EXCHANGES.

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